

BOARD OF ZONING APPEALS

Minutes

February 23, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on February 23, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, FLOYD PITTS, JOHN ROGERS, and DOUG MALONE. KEITH ALTER, JUANITA SWANN AND RANDY PHILLIPS were absent.

The following Planning Department staff members were present: Secretary, DAVID YEAROUT, Current Plans Supervisor DALE MILLER; and Recording Secretary, ROSE SIMMERING.

Also present was SHARON DICKGRAFE, Assistant City Attorney, Law Department.

Also present was KURT A SCHROEDER, Superintendent of Central Inspection.

The chairman, BICKLEY FOSTER called the regular meeting of the Board of Zoning Appeals to order at 1:35 p.m.

It was recognized that there were four voting members present which establishes a quorum.

1. **Approval of the minutes for May 5, 1998.**

FOSTER: Do I have a motion to approve subject to the one change.

MOTION: MALONE moved and ROGERS seconded that the minutes be approved.

MOTION carries 4-0.

2. **Case No. BZA, 25-98**, pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to increase the height of the permitted pole sign from 25 feet to 50 feet on property zoned "LC" Limited Commercial legally described as follows:

All of the existing improvements situated on Lots 1, 3 and 4, The South Main Plaza, Wichita, Kansas, Sedgwick County, Kansas, and Lot 2, except beginning at the Northwest corner thereof; thence South along the West line of said Lot 2, 42.25 feet; thence East parallel with the North line

of said Lot 2, 20 feet; thence South parallel with the West line of said Lot 2, 152.7 feet to a point 26.35 feet North of the South line of said Lot 2; thence East parallel with the South line of said Lot 2, 146.18 feet to the East line thereof; thence North along the East line of said Lot 2, 197.69 feet to the Northeast corner thereof; thence West 149.51 feet to beginning, the South Main Plaza, Wichita, Kansas, Sedgwick County, Kansas. Generally located at Orme and Main .

YEAROUT: It would be appropriate at this point to note. The application has been pulled by the applicant, will be re-advertising for consideration at next month's meeting. They are increasing their request to asked for height variance instead of to 50 feet they want to now go to 60 feet. We are going to re-advertising and we will rehear that case at the March meeting.

FOSTER: Do they pay again when they do that?

YEAROUT: We have procedures to handle how that is handled. But there will be a renotification and it will come back to this Board as a new case with a new case.

3. **Case No. BZA-1-99**, Intel Corporation of America, pursuant to Section 2.12.590.B, Code of the City of Wichita, appealing the Zoning Administrator's decision that the proposed trash facilities under construction at the north end of Parcel 6A Tallgrass Office Park are entirely enclosed within a building as required by CUP DP-92, and the Administrator's related decision to approve the location of the trash facilities on property zoned "NR" Neighborhood Retail legally described as follows:

Lot 1, Block 1, The Shops at Tallgrass Addition to Wichita, Sedgwick County, Kansas, except that part described as: Beginning at the Northwest corner of Lot 2, Block 1, in said Addition, thence along the West line of said Lot 1 bearing North 1 degree 01'02" West a distance of 64.90 feet to the P.C. of a curve to the right having a radius of 176 feet, thence along said curve through a central angle of 8 degrees 11'52" an arc distance of 25.18 feet; thence bearing North 89 degrees 06'26" East a distance of 212.20 feet; thence bearing South 1 degree 01'02" East a distance of 90 feet to the Northeast corner of Lot 2, Block 1; thence along the North line of said Lot 2, bearing South 89 degrees 06'26" West a distance of 214 feet to the point of beginning. Generally located at the north end of Parcel 6A, Tallgrass Commercial and Office Park.

YEAROUT: Reviewed the comments from the Secretary's Report and presented slides of the area. We do not take a detailed position on these kinds of request. That is why the report is so short.

SECRETARY-S REPORT

CASE NUMBER: BZA 1-99

OWNER/APPLICANT: Intel Corporation of America, 2280 N. Tara, Wichita, KS 67226 (Owner)

AGENT: Steve Stark, Fleeson, Gooing, Coulson and Kitch, LLC, 125 N. Market, Suite 1600, Wichita, KS, 67202 (Agent)

REQUEST: Appeal of Zoning Administrator-s decision that the proposed trash facilities at the north end of Parcel 6A of Tallgrass Office Park are entirely enclosed within a building as required by the conditions of DP-92; and also an appeal of the Zoning Administrator-s decision regarding the location of the trash facilities.

CURRENT ZONING: ANR@Neighborhood Retail

LOCATION: North end of Parcel 6A, Tallgrass Office Park CUP (DP-92)
North of 21st Street North and east of Tara

BACKGROUND: The applicant is appealing the decision of the Zoning Administrator that the proposed trash facilities at the north end of Parcel 6A of Tallgrass Office Park are entirely enclosed within a building as required by the conditions of DP-92; and also an appeal of the Zoning Administrator-s decision regarding the location of the trash facilities. Copies of the Zoning Administrator-s letter and the documentation from the applicant are attached.

YEAROUT: It is the Zoning Administrator-s opinion that the building being constructed is an enclosed building that conforms to the requirements of the CUP which is DP-92; and also that the location is proper. Both of those have been appealed by Intel Corporation of America that operates the Inn at Tallgrass. That is the substance of the request. You should have attached to your staff report the cover letter, signed by Steve Stark from Fleeson, Gooing, with a copy of the letter from Mr. Schroeder to Bruce Brown identifying the basis of his decisions and there should be an attachment that shows the argument being presented in writing from the applicants, The Intel Corporation of America. There are also some copies of architectural drawings and notes that were attached. Those were also copied and in your packet. I have slides of the area. This is the zoning slide. You will note Rock Road along the left hand edge of the picture. Twenty-First street is the

major east west road. Terra Circle is a public street that comes in and cul-de-sacs and at that point the access drive that you see in the slides becomes a private drive. The boundary of Parcel 6A is outlined in black. It is essentially at this northwest corner of the property where the structure has been erected and is the substance of this request. This is an aerial photo which was taken, but as you can see this was a 1997 photo which is our most recent copy, but the buildings are not showing up on this property or this aerial. But it does show the Inn at Tallgrass as you will see in the slides. This is the road that comes in, the access road that goes along the south side of The Inn at Tallgrass and then this diagonal road that comes on back northwest and finally heads west back out to Rock Road. This is the Dillions store and the shopping complex around it. This is 21st Street and along the left hand side is Rock Road. This is a photograph essentially taken off the end of Terra Court into the private drive. You can see the sign, The Inn at Tallgrass. This is the Inn itself and this is the intersection where that road that went along the south side of the Inn and then it turns west and then northwest around the corner. This is all a private drive in this location. Same location and I have just turned a little bit to the east and you see here the Shops At Tallgrass that are being built. These are the retail facilities and it shows the trash structure. You can see there has been a mound of dirt and some trees planted. That is reflected in the architectural drawing and that little site plan that is attached to the staff report. I have moved over now in front of where the trash receptacle is located and I am looking straight north. Here you see that sign and again one of the units at the Inn at Tallgrass. This is looking to the north and east and you can see again down this access drive. There is one of the worker's pickup trucks parked in there. You can see we have had construction because of the dirt in the road and these are the units at the Inn at Tallgrass. This essentially is the same location but we are now looking at the back side of Dillions' store. Looking northwest and outward then it turns and heads back off towards Rock Road. Back off to the north and west beyond the edge of the slide. This is taken from almost in front of the sign, The Inn at Tallgrass and looking south. This is the corner of that commercial building and the trash container is located right in this location.

This slide should show it a lot better. This was taken Thursday of last week and you can see it is a masonry structure with the opening that faces essentially to the north. It faces across that drive towards the Inn at Tallgrass. A gap between the access doors and where the trash receptacle would go. This picture does not have the roof structure on. I have been informed that since this was taken, the roof has been completed. But this is what this case is about. Again, there is an aerial in the zoning slide I am going to leave it on this last picture. Because that is the substance of what this request is about. I have been advised that the applicants have some slides. That is an overview. Questions of staff?

MALONE: Dave when did you say that picture was taken right there?

YEAROUT: I took these pictures Thursday of last week. Around 10-11 a.m.

FOSTER: Any other questions of staff?

MALONE: Dave, this is an appeal based on the Zoning Administrator's decision that facilities are entirely enclosed. Is that correct? This is an interpretation decision, is that correct?

YEAROUT: Yes it is. This will be an interpretation issue under the content, under the provision within the CUP which is DP-92.

MALONE: There was a comment in this letter regarding the CUP DP-92 and I quote "Trash collection will be entirely enclosed within a building." Is that supposed to be pulled off of this CUP information that Dale just gave us?

YEAROUT: Yes that is within...

MALONE: I am trying to find that language in this CUP.

YEAROUT: Mr. Schroeder may have the excerpts.

FOSTER: I think we will ask Mr. Schroeder for that information. Is there anything else Dave?

YEAROUT: No.

FOSTER: I think that in the past we have called on staff to make the presentation first to orient us to this. And then called on the applicant. I would remind anybody who wants to speak other than the applicants who paid to be here, there is a sign in sheet on the left. If there is anyone other than applicants present please sign up. I am going to call on Mr. Schroeder to make a presentation. We do not see you very often Mr. Schroeder, is that a good sign?

SCHROEDER: I am glad of that.

KURT SCHROEDER, SUPERINTENDENT OFFICE OF CENTRAL INSPECTION AND THE ZONING ADMINISTRATOR FOR THE CITY OF WICHITA: As Dave has outlined for you, this basically is about a trash containment facility where a dumpster would be located, at the Northwest corner of a new strip center building that is being constructed in this CUP at the north end of Parcel 6A. What I have outlined for you here in this letter, I am just going to touch on some high points of that letter. I do not want to go through it in detail. I think it was sometime prior to Thanksgiving when the owner of The Inn at Tallgrass had given me a call and had some questions about the construction that was

going to happen there at the Shops at Tallgrass and this particular building. He was concerned when he found out that there would be a trash collection storage facility at the back side of this building at the northwest corner. He thought that should not be allowed, in his opinion, to go with that location because of the requirements of the CUP. He subsequently addressed a letter to me dated November 23, 1998, which I received shortly after Thanksgiving, outlining his concerns about that construction. This particular construction that is on the slide. His primary concerns were two which I think he has outlined in his appeal. One was that he did not believe that this really met the intent of the CUP, and did not feel this was within an entirely enclosed building. The second concern was he had some concerns where the trash collection trucks would be accessing this particular storage building when they did their trash pick up. He did not feel that was right since it was on the north side of the building that was being constructed facing towards the Inn at Tallgrass. This was my response to his letter, this letter dated December 7, 1998.

Basically, I did quite an intensive review I thought at the time I looked at the CUP file, I went back and looked at the CPO minutes that had been put together for Amendment #8, which had happened in late 1993-1994 and was the last major amendment to this CUP.

I looked at the minutes of the MAPC hearings where these changes to Parcel 6 were approved. Looking for references for things like screening, trash collection, the location of the trash collection facility etc. I really could find no references to those things other than this language that I put in my letter here, that came off the amendment that was done in 1994. This was directly from that language for Parcel 6A ~~A~~Hours of trash pickup will be limited from 8 A.M. TO 5 P.M. Trash collection will be entirely enclosed within a building; however, restaurants located in the west 200 feet of the south 400 feet of Parcel 6A are allowed to have outdoor trash collection.@ Where it references that outdoor trash collection that is really where the Rio-Bravo restaurant is today, south of these shops. As I stated in my letter I could find nothing in minutes that define that any clearer. It was my opinion and my interpretation that this structure did constitute a building, and let me read to you some things from both the Building Code and the Zoning Code that lead me to that conclusion. The Unified Building Code, which the City has followed for 35 years, in its current addition defines building as: @Building is any structure used or intended for supporting or sheltering any use or occupancy.@ This kind of structure is a use defined in the Building Code. The Building Code further defines structure @structure is that which is built or constructed, an edifice or building of any kind, or any piece of work, artificially built up or composed of parts joined together in some definite manner.@ The Zoning Code also defines building Abuilding means a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, horticultural products, animals or chattels.

When separated by division walls from the ground up without openings, each portion of such building shall be considered a separate building with separate occupancy requirements.@ Using those definitions for both a Abuilding@and/or a Astructure@, I find this to be a building in every term that we could find. It has four walls, it is connected directly to this other building with a separating wall, the plans showed a roof, so it will have a roof

and it has a roof now. I was out there Sunday afternoon and Monday and it is basically completed at this time. By everything that I could find this met the definitions of a building.

This dumpster would be located inside this building. I thought it was interesting that the CUP language differentiated between trash pickup and trash collection. It has those two different phrases in here. To me trash pickup is when the trucks come. And trash collection is when you are collecting in the dumpster during the week between pickups.

This specifically says AThe trash collection must be within the enclosed building.@ In my opinion I see that is what they are doing here. Also he had asked about the access point to this for the pickup for the trash trucks that will be coming up this private drive. Again this is a private road, I could find nothing in the CUP language that prohibited any kind of access point at that location to this Parcel 6A or prohibiting access for any particular purpose such as trash collection or pickup. There again my interpretation was that the CUP Parcel 6A did allow an access point to this building for the trash trucks to pickup what was being collected there between pickups. As I said this is basically completed now. These are concrete walls that match the concrete structure of the building. They have been painted; they match the colors of the main building, roof structure is on and this is an enclosed building by any definition we could find. Questions?

FOSTER: Mr. Schroeder how would a vehicle pickup, is this like a dumpster like they pickup?

SCHROEDER: Yes.

FOSTER: How would they pick it up?

SCHROEDER: These are doors here. This is a little dark in the picture. These are metal doors that would open. This faces toward the north towards the Inn. And it opens out from the drive onto this private street out here in front. So I guess the trash trucks would probably be backing into this spot, collecting the dumpster and then leaving and closing the doors.

FOSTER: Presumably they could not lift it up and dump it, they would have to pull it out of this structure?

SCHROEDER: I am not sure. It probably depends on the type of truck and the type of trash collection hauler that they are working with. I have seen some that have the lifts that go in and pick it up and maybe pull it out.

FOSTER: Other questions?

MALONE: Mr. Schroeder, I asked Dave to get me a copy of the definition of what the Code defines as an enclosed building. But could you read it again for us please.

SCHROEDER: I have one from the Building Code and one from the Zoning Code both.

MALONE: You make your decision based on which interpretation?

SCHROEDER: Both. In the Building Code AA building is a structure used or intended for supporting or sheltering any use or occupancy.@ In the Zoning Code AA building means, a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, horticultural products, animals or chattels. When separated by division walls from the ground up without openings, each portion of such building shall be considered a separate building with separate occupancy requirements.@I also looked up chattels too. What it said there was @an article of personal moveable property@ which I think would also be this dumpster, what is stored in there.

MALONE: And there was some conversation regarding that access drive at the back. That is a private access drive? Owned by who?

SCHROEDER: I am not sure. Or if it is half owned by Slawson and by the Inn.

MALONE: I assume there is provision for cross access easements, that kind of thing?

SCHROEDER: Yes.

FOSTER: Any other questions of the members?

MALONE: Just a comment to the Board. What will probably occur is BFI or whoever will open those doors and roll out a dumpster and they will pick it up and dump it and then roll it back in. I assume unless they have a difference provision.

FOSTER: Any other questions of Mr. Schroeder?

SCHROEDER: Mr. Malone, I do not know which copy of the CUP you have, Parcel 6A?

MALONE: Yes.

SCHROEDER: Dated 3-8, See administrative adjustment dated 3-18-96. Is that on your copy?

MALONE: Yes.

SCHROEDER: Under Parcel 6A go down to the third paragraph the last two sentences. That is what I quoted in my letter.

PITTS: We have been given copies of the wrong edge of the sheet.

FOSTER: Mr. Schroeder, I do not know if you can answer this question. At the time of the CUP and I assume you were not there either, so I guess I direct this to you or staff. Was there any discussion of this in any great manner at the MAPC meeting? Does anyone know when the CUP was approved? Was this item singled out for any discussion that anyone was aware of?

SCHROEDER: It is a little hard for me to tell you about the original CUP. I went back and looked, primarily there was the last major amendment which was done in 1993-1994, which you have a copy of there. It involved this particular Parcel 6A to a great detail. I went back and looked at the minutes there and while there was some discussion about trash collection. It primarily involved that outdoor trash collection on the south part of that lot which is now the Rio-Bravo restaurant. I could not find any references to location of trash pickup for this particular office type development. Other than what ended up on the plan that said it would be within this enclosed building.

FOSTER: What year was this plan made?

SCHROEDER: That was May 1993. That was approved February 8, 1994 by the City Council.

MALONE: Mr Schroeder, on these CUP-S let-s say a CUP that was done within the last three or four years, when they talk about trash buildings or enclosures is this same language still used? I just wonder if you can recall of a CUP that you are aware of that has a provision for trash.

SCHROEDER: I can not off-hand recall. A lot of them do not require them within buildings. Some just require screening of that kind of facility. There is probably some of them out there that have similar language.

MALONE: I am familiar with these trash enclosures and for the most part these trash enclosures, in some of the older areas are just wood gates and fences. And as these areas have become more and more developed in the cities, the cities become more and more aware that some of these wooden fences have the maintenance problems. They require split face block or some kind of block enclosure. I am not sure I have seen an enclosure to this magnitude where they have a roof on it. Is that specific to this CUP?

SCHROEDER: Yes. As I have said there might be some other CUP-s out there that have similar language. I just can not tell you where right off hand. Many of them just require the solid six foot masonry wall or something like that around the trash receptacle. Just for your information, Mr. Brown had indicated I think he may have attended the CPO meeting at the time of this amendment. He thought there was some discussion about this particular issue. You may want to ask him about this. I looked at the minutes. I did not see any detailed information on that.

FOSTER: Mr. Schroeder, I may be redundant here but, the wording that we are seeing now on Parcel 6A, this was submitted by the applicant at the time. This was what, not part of the amendment? Or was this originally in 1993? What we are talking about, did it occur as a result of the amendment you mentioned in 1994?

SCHROEDER: I think it probably did. I would have to go back and pull the file. I think Dave might be able to look at an older CUP. The last previous amendment was in 1989. We could look at that and see.

FOSTER: I think you see what I am trying to understand. Was this specifically discussed at the hearing? Did everyone know what the issue was? I believe Dale you are looking that up?

MILLER: The minutes I could find did not reference this particular item at the north end. There was not much discussion about it. Mostly the discussion focused on was where the outdoor trash collection was going to be on the south end of this Parcel.

FOSTER: Lets hold my question and give staff time. I would just like to know the situation at the time, whether this was a particular item of amendment or whether it was intentionally discussed. Whether this is something casually presented by the developer and not brought out as any particular problem. Any other questions of Mr. Schroeder? If you will stay around Mr. Schroeder we will probably need you again. We will now open the meeting up to the public meeting and call on the applicant first. Who is representing the applicant?

STEPHEN M STARK ATTORNEY WITH FLEESON, GOOING, COULSON AND KITCH, L.L.C., 125 North Market, P O BOX 997, Wichita KS 67201-0997, I am the agent for the applicant here. The applicant is Intel Corporation of America, which is the owner of the Inn at Tallgrass. The individual who is the sole shareholder of Intel Corporation of American is Bruce Brown. Bruce Brown is also here. What I would like to do is give a brief overview of the issue as we see it. Mention the particular topics of concern to the

Inn at Tallgrass and then turn it over to Mr. Brown to explain the particular details. Would that be alright Mr. Chairmen?

FOSTER: Thank you. Yes.

STARK: From a technical standpoint the issues as we see them are the particular provision that Mr. Schroeder mentions. Which is in the CUP concerns Parcel 6A, and very briefly worded it says ATrash collection will be entirely enclosed within a building.@ Mr. Schroeder spent sometime developing what the City views a building to be and we have a somewhat different opinion about that. The other technical provision we want to draw to your attention is general condition number 16 in the CUP. I have a copy of that and I will just go ahead and paraphrase through that so that you will be able to track the interpretation we would like to advance on general condition number 16. The critical part of 16 says AThe CUP document is generally in character and will require submission of a detailed site plan and landscape buffer plan for each parcel. This will require administrative approval prior to the issuance of a building permit. The plan shall show among other things, interior circulation, parking, screening, and other similar design considerations which may affect adjacent property or the general health and welfare of the public.@ Now it is that last long clause that I would like to draw your attention to, ADesign considerations which may affect adjacent property or the general health and welfare of the public.@ When this trash facility is viewed from the eyes of the Inn at Tallgrass, which is the adjacent property just to the north of this building that Slawson is putting in, you will see a dramatically different picture than these photographs show. Which are basically within the property that is owned by Slawson. What Mr. Brown will show you is several slides, one of which is taken from the main picture window of the main guest area, where bookings are made and patrons come to check in. You will see from that picture window what this thing looks like. It is not the kind of thing you would be proud of an Inn at Tallgrass. Now one thing that Mr. Schroeder mentioned which I would like to follow up on, is the reference to trash collection. The distinction that he has drawing between collection and pickup. One thing that we might miss in the shuffle here unless we look at it again from the Inn at Tallgrass perspective, is that as far as we can tell whoever occupies this building is going to have to walk outside around the side of this building and right in front of the Inn at Tallgrass to make their daily, hourly, dump offs of trash, into that facility. So there is collection occurring, presumably every day. Not within the building but around the building. Perhaps I understand that developer-s architect is here, and perhaps he can address whether there is interior access to at least minimize that impact. We suspect not, but we do not know for sure. The particular other concerns that we have. Let-s contrast how this is handled with another building within the very same Parcel 6A. Back in 1993-1994 the last major Amendment #8 as I understand, I was not involved at the time, the Summerfield Homeowners Association immediately to the east of the particular building

that was being planned raised some concerns about what was going in. An accommodation was reached and as I understand it the Summerfield people required that a private covenant be filed to protect their interest. Now let me read you what that covenant says about trash, in paragraph three, ~~A~~All trash shall be collected and stored within the buildings. Now to be sure this covenant does not technically apply to the subject building in this trash enclosure. But what Mr. Brown will show you is how the developer accommodated those homeowners under language, ~~A~~Trash will be collected and stored within the buildings which is not even as stringent as the CUP provision that says, ~~A~~Trash collection will be entirely enclosed within a building. You will see how that was designed, that other trash facility at the next door building and you will contrast that with what is being planned here. Our point basically being that this is minimal. It affects the Inn at Tallgrass in a substantial way. At least apply the same criteria that the homeowners prevailed upon getting the developer to do. So we have esthetic concerns, we have some photos, we also have our architect's letter that we will hand in for the record outlining those concerns. We have safety concerns, and access complications. Mr. Yearout, started to explain how the trucks are going to get in and out of that, but until you see it again a little further away from the Inn at Tallgrass, just how those complications are going to unfold will not be clear yet. We will reserve that for Mr. Brown. It appears to be minimal design. Now this is where we have a difference of opinion with Mr. Schroeder.

We understand the references to the Building Code and the Zoning Code. What is a building? As I heard it if it has walls and a roof and there is some kind of a use inside, generally speaking constitutes a building. But, we would suggest when one reads the CUP let's give it a common sense interpretation. ~~A~~Entirely enclosed within a building. Does that allow just any kind of physical structure out there that you put a dumpster in? It looks like there is even an opening there. I understand that at least one of the definitions is that there can not be any openings. Perhaps that is going to be filled in right above the doors, I do not know. Other options could have been explored and should have been explored.

In fact, Mr. Brown, in late October 1998, approached the general contractor on site and said ~~A~~Where is the trash going to go? The general contract which is Elcon I believe, explained it is going over here. Apparently, it was going to be a separate dumpster physically detached from the building. Mr. Brown raised the issue then, and I think has consistently been raising this issue. As far as we can tell, the developer came back and scrambled to take what was going to be a free standing trash structure and then just added it on; tacked it on to the main wall of this building as the solution. Again, we are saying that is minimal. Other options should have been explored and could have been explored.

After all the bottom line in the CUP, paragraph 16 is that ~~A~~The designing considerations if they affect adjacent property owners, and this surely will, or the general health and welfare of the public, and it does. Then it is the proper area for the City to say the developer ~~A~~This is not enough. You need to take into consideration your neighbors. Go back to the drawing board, you've got plenty of property to design it so it has a less intrusive effect on the closest property to this development. So we have been proactive.

We have tried to stop it. We tried to urge other designs but we are not getting too far. That is why we are here before the BZA to request that you step in and apply some even handedness and fairness to this situation. The final point I am going to make and Mr. Brown will address this in more detail because I was not a party to this. But at the time that Amendment #8 affected Parcel 6A was proposed in 1993-1994, there were some plans that were presented by the developer that showed among other things, where the restaurant was going in and that was not acceptable to the homeowners. In order to assure as smooth sailing as possible, the developer agreed to the private convent that I mentioned to you, that talks about trash will be collected and stored within the building.

Redesigned where the restaurant was going to go, and gave an assurance to Mr. Brown that the trash would be taken care of when the buildings started to occur closer to his property. We have something we will also submit into the record. It is called a site leasing plan of September 1994. It shows in this area that there is to be a trash enclosure and it appears to be totally within the four walls of the main building. Not this after the fact, lean to that is being proposed to shelter the trash now. So there seems to be a retreat from what the developer was assuring Mr. Brown in 1994. I realize the City is not to enforce private agreements, but we wanted to bring that to your attention so that you are mindful that this is not something that is coming up at the last minute. This is something we thought was going to be addressed. It is not being addressed in a very straightforward fashion. Certainly not acceptable to the Inn at Tallgrass and we would submit that it should not be acceptable to the BZA. I would like to turn the microphone over to Mr. Brown and let him show you a few slides. Again, from the prospective of The Inn at Tallgrass and explain some more of these details. I will be happy to respond to any questions but I think you probably want to hear from the applicant.

FOSTER: Let's hear from Mr. Brown and then hold you at bay.

MILLER: Mr. Chairmen, while he is doing that you had asked a question about what the earlier versions may have said. Here is one approved in June 1989, and item number 21 says ATrash receptacles shall be appropriately screened to hide them from ground view.@ That one was approved in June 1989, and is superseded later by 1993 and 1994 by different amendments.

FOSTER: So the first wording came in 1993 that we are looking at now?

MILLER: Well, this is 1989.

FOSTER: I mean that the wording we are looking at now Aenclosed structure@ came in 1993.

MILLER: It appears to be so. Yes.

FOSTER: Is this the same developer we are dealing with from 1989 to 1993. Or did this go from Ritchie Brothers to Slawsons?

MILLER: I can not answer that.

PITTS: Are you reading that from Item 21 of this document that we have?

MILLER: No. This was an earlier CUP that was superseded by the one that you have there. Or at least a later version anyway.

YEAROUT: Mr. Pitts, you are right. The current language in the CUP and general provision 21 does say ATrash receptacles shall be appropriately screened to hide them from ground view.@ But there is also the additional language in the portion for Parcel 6A that extends the language regarding trash receptacles. Both of those are in the current CUP.

MR. BRUCE BROWN, THE INN AT TALLGRASS, 2280 North Tara, Wichita, KS 67206, the owner and operator Intel Corporation of American is the parent company. This really begins back in 1993, when Slawson Development went for rezoning of the Parcel south of us. This is the first design that was submitted, Steve is going to pass a copy around. This was the first design location of the buildings, so forth and the Summerfield Homeowners situated to the east of the Parcel and myself had some problems with this design. Primarily with the restaurant location where it is on this design and with the trash location which was going to be on the due northeast end of the retail building@B@I believe. Plus, there was some trash on that corner of the restaurant, it is not designated, it has been quite a few years ago. I just remember that the north end being where the trash and trash trucks. If you look off to the top end of the design the page you will see outlines of the hotel buildings. The one that is a U shape immediately across the drive, that is a guest building that has twelve suites that houses regular hotel guests that come and go. That would be the front door orientation that faces south. So this is where they come in and out of the building. This design was pretty unacceptable to the Summerfield Homeowners and to myself in 1993. We went to the CPO meeting and made our feelings known. So as a result of that, this design was voted down. Then Slawson Development came up with this next design and proposed it to the Summerfield Homeowner-s and there is some correspondence that goes along with it. This was what we reached an agreement on so that the Parcel could be rezoned for their development purposes. As you can see the restaurant was moved down to the southwest end of the Parcel. You are looking at the back of retail from Summerfield Homeowners and looking at the back of retail from my business. Then there was wording in the negotiation between Slawson Development and the Summerfield Homeowners which Steve read to you about the trash collection being wholly contained inside the building. I think that was pretty fundamental back then, sitting

up to where we get to today. With my understanding of what was going to happen ultimately. When the Parcel was developed when buildings were built. I watched this building begin. I saw the concrete poured, I saw the building start to take shape, and as it did, I started becoming concerned about trash collection. Because on the building that already exists now, it is the building to the east that is adjacent to the Summerfield Homeowners this is the structure for their trash collection. Behind this roll up door is the big metal blue dumpster. You can see that it is integral to the building. It is contained in the design, it is within the basic four walls of it. It is pretty obvious right over to the west of this is the showroom windows of the store, I guess it is a home furnishing type store.

It sits very nicely along with a front retail area which, I am not even after the front retail look. I get the back of the building anyway. In October 1998, I noticed that the building going up did not have a structure like this, it did not have an opening on a room or anything. So in October 1998, I made my first contact with Central Inspection which I got referred to MAPC, and it was recommended that I go over and talk to the building superintendent for Alcon Construction who is doing the construction of the other building.

That building superintendent again this is in October, walked me over to where the trash facility was to be built. Which was a separate location to the west of the building that is going up. I knew at that point there were problems that things had been misconstrued.

I made some further calls and some further investigation in late October I made a phone call to Marvin Krout to figure out where I was going with this. I did talk to Kurt Schroeder in early November. That is when this situation to my knowledge was referred to Slawson Development, that there maybe a problem with a separate trash facility that might not be acceptable under the CUP and the zoning. Shortly after that, I was contacted by Jerry Jones, who represents Slawson Development, and shortly after that, received on November 11, 1998, a redraw of the situation that moved the trash facility over and connected to the main building that was being built.

MALONE: Do you have a copy of that drawing?

BROWN: Yes. I have the original copy of it. I did not have photocopies made.

FOSTER: Let the record show that Mr. Schroeder is showing the design that Mr. Brown is referred to Mr. Malone and to the Board.

MALONE: That site plan was attached in our packets. I thought it was something different.

FOSTER: The design that Mr. Brown has provided us is the same one staff has provided us earlier in our material.

BROWN: That brought it up to the point that I found out that they intended to add this on.

You can see the opening above the gates of the door of the structure. This is a picture I took last week. It is right straight out the front picture window of our guest house buildings. This is our main registration, lobby, front desk, this is the main entrance and exit. There are doors flanking on either side if this is facing due south the doors are on the east and west. This effectively is what everyone is going to look at after leaving our facility. After they have registered to proceed to their car and go to whichever suite it is that they are going to stay in. As you get over towards the first guest building the contrast is not very good. This is the view of it still. I realize that there has been landscaping which makes it look really wonderful from the back of Dillion-s, but the landscaping does not really do anything to protect my interest or to help me with my business. Where should I put this board up?

FOSTER: Lean it against projector.

BROWN: What Steve is holding he referred to earlier and you should be receiving smaller versions of it. What I have highlighted, again, my understanding through this whole procedure with CPO, and with our protest position of the location of the restaurants and the trash pickup was that it would be taken care of. I had that on word from a representative back then of Slawson Development. As you can see the restaurant got moved and the trash facility, it is hard to read on your little sheets, but on Steve-s board you can see that the trash is very definately located in both buildings inside of what I consider the main confines of the building. This again goes back to 1994, this was what was represented to me being the adjacent property owner. As time proceeded, I had no reason to expect that would be changed. My main concern, I am understanding that development is going to go on. That field has been there, other growth has happened.

I understand that is inevitable. My concern is about being protected from a business stand point. Steve is handing copies of two letters to you. The one from H & S Consultants, Inc., this is a gentlemen that stays with us and does business in Wichita and made the comment to me when the building was being built and when some of the utilities stuff was being done. He made the comment about the effect it has on the look at the Inn at Tallgrass. The Inn at Tallgrass has been in a residential setting. We are about 250-300 yards from Tallgrass Country Club. The setting is very, very, important to our business. We do long term extended stay. We have kitchens in every suite. People who stay with us, probably ninety percent, are business people in Wichita to do business. They would be either on a project assignment or relocation. They could be an accountant, attorneys, professional people, white collar, blue collar, all across the spectrum. That is the majority of our business. The gentlemen staying with us from H & S Consultants, Inc., noticed it and brought it up to me and I asked him to write me a letter so I could use it. This is the letter that he has written. He talks about why he stays in the Inn, the facts that are important to him. He noticed the construction. He makes the point that he believes that it detracts from his stay at the hotel. He understands the planting of the trees and then the

issue of the trash. This location is directly south, eventually you get to our swimming pool area, where in the summer of course people are using. Every Thursday night we host a barbeque for the guests. Obviously, at least half of the year we get a strong south wind, especially during the summer when people are going to be using the pool. So the smell of this facility is an issue to me. I know that is not addressed in the CUP or Zoning or any of the other stuff. It does have an impact on my people and my business. The next letter from Mercantile Bank he is a Vice President - Commercial Banking out of Kansas City comes to Wichita to do business development, here he calls on customers to get new business. He made the same comment to me. I asked him to put it in a letter, which he did and again, he tells why he liked the location, business development brings him to Wichita. He understands, I think, the impact on business, adverse impact that something like this would have and I think he makes the point why he stays, what impact this would have, and again brings up the eyesore of the trash dumpster and the smell. This next letter that Steve is handing out is a copy of a letter from David Haines/Architect, I would think most of you are familiar with him or his work. He has been in Wichita for a number of years. He has done a lot of commercial buildings, residential, he is pretty much an expert. I asked Mr. Haines to come out and take a look early on in this situation before it really got snowballing. I wanted his opinion about the building and whether it was a building, a facility, a lean-to, whether it was part of the big building or what. As a result of that visit that he made to the site he sent me the letter that he had the opportunity to look at it. He made the point about the access by trash trucks and I had told him about it originally being located as a separate structure and then being attached to the building. I had given him that background and he makes the point about how it was handled from a design stand point. He was very impressed by the design of the big building, he made the point to me that the big building has such nice lines that it was obviously that this small building was an afterthought, a remedy, a fix. And that it obviously, was not designed in at the beginning of the deal that it was an afterthought. One point on trash collection that I wanted to make was the collection or the pickup. The collection is to occur from 8 a.m. to 5 p.m. I am assuming that includes the occupants of the leased facility, the store owners. Most stores stay open past 5 p.m. They stay open until 9 p.m. on some nights, I have a hard time picturing them sticking to the 8 a.m. to 5 p.m. restriction of using this facility to deposit their trash into it. Between the hours of 5 p.m. and 9 p.m. or whenever they are open after this 8 a.m. to 5 p.m. restriction. I do not know any way at this point that zoning handles an operation problem like that. I am just telling you that is going to be a problem. Blowing trash coming from the south up to my facility is going to be a problem, and the smell is going to be a problem. I think that paragraph 16 of the CUP says more than anything about how I feel about this the adverse impact that it will have on my business and that all along through this I thought that the spirit of what occurred with the CPO meeting with the agreement that was struck with the redraw of the site plan, with the relocation with the restaurant and the trash facility that the whole spirit of that has basically been thrown out the window. Regardless of black and white letter of what may or not been

recorded in 1989 or 1993-1994 or 1998. Questions?

FOSTER: Mr. Brown, just to make sure that I understand this, I am looking at the site leasing plan, I notice the yellow marked area in the northwest corner. Now your facility is then directly northwest of that? Is that correct?

BROWN: This road comes ... (away from microphone)... We are North of the back of this building but the way that this drive way.....with proper screening.....

FOSTER: I have another question if you want to go back to the podium there so it will be recorded. How far away is the swimming pool from here?

BROWN: The swimming pool. I am going to guess it sits about 30 yards north of the guests building that I have indicated to you that shows on the outline that is a U-shape, the swimming pool is about 30 yards north of it. It is in the center of our complex. The buildings are individual buildings but the pool access is off of the guest house. The lobby registration building and the pool sits to the east of the lobby registration building and to the north of our guests building number one.

FOSTER: Can you identify the swimming pool?

BROWN: The facility in question? (Away from microphone.....)

FOSTER: Let's go back to the one that Mr. Schroeder was explaining. The front of the enclosure. Mr. Brown, how do you envision people using that facility? You mind telling us about that?

BROWN: The leased people?

MALONE: Excuse me. I think we ought to ask the owners of the shopping center how their patrons, how they are going to use it that trash can.

FOSTER: But I would like to hear Mr. Brown. How do you envision them using that facility?

BROWN: There is a sidewalk to the side of the picture that allows them access from the south side of this structure. They would access this structure from the south side or from around the east side north and into here. I assume they are going to have to carry their trash. They are going to have to carry boxes, bags or trash cans, outside the facility, through the front doors of this and into the dumpster.

FOSTER: Any other questions of Mr. Brown?

MALONE: I have a couple of comments. First of all I respect the situation that you are in Mr. Brown. It just needs to be made aware that what we are doing here is listening to whether or not Mr Schroeder made the correct interpretation here. You had mentioned that you had been tracking this development all along. When did you see the first building and the trash enclosure related to it? Were you involved in seeing what they were doing on that first phase?

BROWN: On the east. The building over on the east?

MALONE: Yes, where the trash enclosure faces 21st street.

BROWN: Yes, I was interested in that because of the CPO meeting with the Summerfield Homeowners and saw the construction, saw it go up, saw the space on that building and since that space was there and it did not appear there was going to be a trash... You can see north of that building is a pretty wide open field still. So you can see if any structure is going to go up there pretty easy. That space was there, it was an open cavity, had a concrete pole.

MALONE: So you knew that was the trash enclosure on the first phase?

BROWN: Sure. This one picture has this concrete pole that was up pretty early. The yellow poles, that cavity, when that building was going up, that cavity was there, then the yellow poles went up. I just assumed that was going to be trash, I did not think it was going to be any kind of a major warehouse, dock, or something, and then as it developed out you can see this on 21st. It is pretty blatant, even though I am situated on the north and can see the back part of the building more than the public would on a regular basis. So I can see the construction occur on a daily basis from where we are but it filled out. It was there no question about that.

MALONE: At what point did you see the plan go from this? There is not a date on this or I would reference it , to this? Where the enclosure was outside of the building?

BROWN: I watched the building in question go up from ground breaking, to slab on grade, to walls, and as soon as the walls went and the windows and I could tell what was there on the south side of the building in question. There is a kind of a design like this but it is a solid wall across it. Like that I knew that wasn't going to be the same case with a hollow space. That was when I approached, in October, 1998, I do not remember the date of when they broke ground on it. I went to the City, Alcon, and back to the City and it was not until I went through that whole process that the building was moved from freestanding to attached to this building under construction.

MALONE: I am not trying to trick you here. If this trash enclosure was located somewhere else in its current configuration would you consider it an adequate trash enclosure based on your interpretation? In other words this right here is obviously a trash enclosure that is within a building. The trash enclosure that is on the back side of that other building that faces your front door, if that enclosure was somewhere else not facing your front door, could you consider it a trash enclosure?

BROWN: I would say it is still a lean-to, if they had it on the north end of the restaurant, down there where it is not in my face, it is not in the Summerfield Homeowners face, it is on the back side of Dillions the impact of it would be completely different. But it still does not follow the drawings that were given to me in 1993 and what I was told by Slawson Development would happen.

FOSTER: Any other questions of Mr. Brown? Let's go on and open it up for further presentation. Is there anyone else to speak to this issue?

ROGER BROOKS, ARCHITECT, FOR THE DEVELOPER SLAWSON, 11360 Southwest 60th Street, I might start out by indicating that I was the architect for this structure as well as the second structure that is the subject of the appeal. We interpret both the trash enclosure areas differently from a design point of view. But from the technical point of view of the wording and intent of the CUP, we feel that they are both well within keeping of the intent and letter of the CUP. I would like to compare these two enclosures briefly. They function identically, in that, as you look down the long wall that would be that back side of the retail shops. They have delivery doors in the back side. And of course those would be the doors where they would be bringing trash out of their shops. There is a door into this enclosed area where they will enter from the outside and bring their trash from their shops deposit it in a dumpster and that would be the standard routine of getting trash into the dumpster.

MALONE: May I qualify that? You are saying they will open this door on the side that is like a 3 foot wide door to go in dump the trash verses raising that overhead door?

BROOKS: That is correct. In theory, yes they could raise the door and put it in if they wanted to that would be optional. The other dumpster does not have and this enclosure does not have interior access whatsoever; the other dumpster by the same token does not have interior access whatsoever; the other dumpster does not have a side three foot walk door if you will, for entering the dumpster. The main reason being because the dumpster, enclosure in question has gates which can be easily opened and closed. Basically just one-half of the gate would be opened for access.

MALONE: Let me qualify that?

FOSTER: Let's go to the picture of the other one.

MALONE: I have been out there enough that I have the picture in my head. I did not see a gate though.

BROOKS: I do have some pictures that I might circulate as I am continuing to talk of the enclosure. These were taken last Sunday.

MALONE: Mr. Brooks can I ask you a question?

BROOKS: Yes.

MALONE: There is not a separate entrance, a 3-0 entrance, if it were entrance into this enclosure. You have to go through these gates? Is that correct?

BROOKS: Yes. Through one of the gates. Yes.

MALONE: Is that spring loaded so it shuts itself?

BROOKS: No.

MALONE: So in theory this door could be left open?

BROOKS: Yes. The access is both from the south and from the north. Most of usage will be from the north into this area. The design concept on this corner of the building had to be altered because of some functional and practical constraints of the trash enclosure functions. We wanted to first of all to locate the enclosure with convenient access to the shop patrons. So it had to be located in this location. I believe that this is exactly in the same location as has always been presented in any development plan that I have seen for the enclosure location. We located it back as far as we could off of the roadway so that as it would be accessed by trash trucks there would be minimal impact to the private roadway in terms of deterioration of that paving. We have provided quite a deep apron of concrete entirely of course on this property to safe guard against that. Another consideration is that this is the second building of the three phase shopping center. The third building will be to the east of this and it will have an interior enclosure just like the one on the south. The reason it can have that and this one does not is really a grade change at this corner of the building. The surface that the dumpster wants to roll out on to be picked up by the truck is two feet below the floor elevation, so without any interior hallways or circulating space we felt like the dumpster had to set on the grade level that it was going to be picked up truck level. So there was not an opportunity to make an interior transition

of space. So that is why it is located separately from the building itself. In conjunction with that consideration we have taken this structure and completely downplayed it from a design point of view. Theoretically, we feel that by extensive landscape it has virtually disappeared from many perspectives. The one perspective that it can not be totally screened from is the truck access path. There is just no opportunity to screen that particular path. So that left us with only two directions of approach for pick up and that is from the west and from the north. The way the particular building laid out we felt it was best accessed from the north.

MALONE: May I ask a Question? Why is that? Your last comment was that you thought it would be particularly best if it was accessed.

BROOKS: The way the property line and the setback requirements were, we had depth here to work with setting the trash enclosure back further away from the Inn at Tallgrass building then we did from the west. This was more of a secondary traveled road then the main road along the west side of the building. I would like to point out another couple of items if I could. The aspect of odors from the trash was addressed. I would like to point out that there will be no restaurant use in this building at all, so there will be no opportunity for food type refuse, so I do not think odors will really become a problem. Also blowing trash was discussed, I would like to point out that the doors are on the north. There are no openings on the south and west and any prevailing winds will blow the trash back into the enclosure or is going to be able to get at the trash to blow it out of the enclosure. Also, I would also like to point out that there was considerable discussion apparently, in 1993, concerning the open trash collection of the restaurant area and it was the developers who elected the approach to completely put that trash within an enclosed area. In that instance, the developer went over and above what the expectation may have been from the wording of the CUP. I would also like to point out too, in this case, that there is no mention at all of landscaping screening of the trash enclosure as required by the CUP, but the developer has taken it upon himself to completely landscape this enclosure with trees that will be screening the view year around. I would like to circulate this for the Board to look at. It is a picture of the trash enclosure of the Inn at Tallgrass. Basically, I think there is a slide here that would indicate where it is with proximity to the pool and the other residential buildings and the Inn. I would like to point out that it is located 60 and 90 feet from respective buildings, and close proximity. Whereas our trash enclosure is located 141 feet from the nearest Inn at the Tallgrass building. We have located our enclosure considerably further away then even their own enclosures are located. I think you could contrast the appearance and the screening of their trash collection area with that of the developer and draw your own conclusions. I would answer any questions.

FOSTER: Mr. Brown, looking at that facility there, may I assume the area above the door is to remain open?

BROOKS: Yes it is.

FOSTER: And what purpose is that?

BROOKS: No particular purpose. The doors could go full height. Equally as easily.

FOSTER: There is no other entrance to the facility except those two doors?

BROOKS: That is correct.

PITTS: Are those gates spring hinged?

BROOKS: Presently they are not.

FOSTER: They open inward or outward?

BROOKS: They open outward.

FOSTER: Did you prepare the plan for the shops that was submitted to Central Inspection?

BROOKS: Yes.

FOSTER: Where did it show the solution to the refuse location at that time?

BROOKS: At the time we submitted the original plans the enclosure was located approximately 6 feet away from the main structure itself.

FOSTER: And not attached?

BROOKS: Not attached.

FOSTER: Were you unaware that was an requirement of the CUP?

BROOKS: No. What requirement are you referring to?

FOSTER: Well, the CUP talked about an enclosed.

PITTS: It did not say it could not be detached though.

BROOKS: Right, it could have been an detached and still have been in compliance.

FOSTER: A completely enclosed facility.

BROOKS: Right.

FOSTER: Do you know what design was submitted at that time?

BROOKS: Basically this same design. It is detailed on the drawings but it is essentially the same design.

FOSTER: Which drawing are you talking about? You mean the landscape drawing?

BROOKS: No sir, it is on the construction drawing in the site details.

MALONE: Bickley, that is in your minutes.

YEAROUT: Mr. Chairmen, you might note also that Mr. Schroeder has had one of his plan examiners bring up the full set of construction drawing. Those are laid out on the table by Mr. Malone, if anyone wishes to take a look at all of those. I think you had a chance to go through them as well.

MALONE: Yes.

FOSTER: Other questions for Mr. Brooks? Thank you Mr. Brooks. Other speakers?

JERRY JONES, SLAWSON DEVELOPMENT COMPANY, 104 South Broadway, I just want to follow-up on a couple of things that Mr. Brooks said. Really, I want to say that we have put an inordinate amount of time into the design of this trash structure. I wish that it met the level of expectation that our neighbor has for it. But I will say that I have never seen a trash enclosure that has had as much design and thought put into it as this one. We did in the process of designing this, looked at every conceivable possibility. At the west end of this we have some grade changes that do not allow trash trucks to be able to get at the facility. At the east of the building we have designed, or our architect Mr. Brooks, has designed a pass through that will be an enmity of our shopping center, it will enable guests from the Inn at Tallgrass to be able to walk through a pass through between buildings. It also sets up high and that also did not work. I think if you look, I did not get a chance to see this plan but I think it probably shows the trash enclosure being in the same place. That is because of the grade and the access points it is the most logical and practically the only place you can put it. We have tried very hard for this not to look like

the back of a building and we have done that for our own reason. We are developing other Parcels of land in this area. But the fact of the matter is the building has to have a back somewhere, and this is it and we are trying the hardest we can through architectural treatments, paints, landscaping and trees and brims. We have not been able to plant the shrubs yet because it has been too cold. But this will be further screened by shrubs. We have designed this as a building with a roof and concrete walls and I just wanted to make it very clear that this is not something we have taken lightly, we have tried very hard to design the best trash enclosure that you possibly could. We responded very quickly once we found out from the City, that there was a neighbor that had a problem with the trash enclosure. In other words, the contact was made to us from the City, we found out there was a problem, we responded very quickly with another design that not only we felt met the spirit of the law but the letter of law. Again, we are trying very hard and I believe we have gone way beyond the norm and hope that as this development becomes operational and the project is completed it will be a good neighbor and not cause any problems.

FOSTER: Mr. Jones, Mr Brown mentioned about the difficulty backing in and out. Do you foresee that it will be necessary to move cars or hope that they are parked there in getting in and out of that.

JONES: None at all. I think we asked all those same questions of our architect and again who spent a lot time designing this and I do not believe that will be a problem.

FOSTER: Other questions from the Board? Are there other person to speak to this case? Are there other questions to other members that have already spoken.

MALONE: Mr. Schroeder, we are supposed to interpret your interpretation. Just a question. Given that this first trash enclosure was within the building, actually the walls of the building, what made you differentiate that from the trash enclosure that again, you are interpreting that this is a building is that correct?

SCHROEDER: Absolutely, this is a building. Every definition that I can find for it. What we have always done with our building code, this qualifies as a building. I would mention that I was not involved in those discussions in 1993 and 1994 during that major amendment, I looked at as many minutes as I could find. Most of the discussion or at least the minutes that were taken revolved around the screening and that kind of thing that faced the single-family residential district to the east. This is where the Inn is, it is zoned General Office and typically and in our zoning standards there is a whole set of different requirements for screening and landscaping and buffering between that kind of development and general office as opposed to that kind development and single-family residential.

MALONE: And your interpretation of this still being a building. Irrespective of the fact, this opening is not fully concealed or has movable doors, and your interpretation is it is still a building because it has four walls and or at least three walls and a roof on it.

SCHROEDER: We would probably, the Building Code would call this a building if it just had four columns attached to the main building and a roof. We typically look at enclosures being at least half a wall, enclosing each elevation.

FOSTER: You are saying that it does not bother you that part of the gate is open?

SCHROEDER: I did not say that. I am saying that by every interpretation of a building that I can find this qualifies as a building and it also qualifies as an enclosed structure or building. By zoning, by the building code and by all the definitions that we use. As I said this does have a roof on it now and it is enclosed now.

FOSTER: In other words, when you all issued a permit, earlier than on the detached design?

SCHROEDER: Yes we have issued a building permit on this design.

FOSTER: There was evidently one detached design earlier.

SCHROEDER: Yes, we had issued a conditional building permit for footings, and foundation up to a certain point of construction which is very typical in today's environment. But the full building permit was issued after this redesign took place.

FOSTER: Did you consider the detached structure a building?

SCHROEDER: Yes, absolutely and that is where I tried to emphasize in that definition out of the Building Code where it talks about a dividing wall. That is exactly the proposes of that. You can have four walls and attach it to another building and call this a building separate from this building that it is attached to.

FOSTER: Other questions? Thank you Mr. Schroeder. I am going ask the applicants if they have any other comments but first I am going to ask the staff, is there anything else that you have discovered from the previous hearing in 1993-1994 that would bear information on this?

YEAROUT: Nothing that we have not already brought forward to you. It is evident from the file that several of these same parties were involved in the dialogue at the time that was being considered. The language within the current CUP was acknowledged at that

time but you have that language in front of you but it is still a matter of interpretation of what that language means that is what the issue is today.

FOSTER: And the site leasing plan that I have in my hand is the one that was submitted to the staff for approval.

YEAROUT: That I cannot tell you. There is not that kind of information in the file that I saw. I think there has been several iterations of the internal layout and design within the overall development of Parcel 6A. The current language within the CUP talks to building density and uses primarily generated or oriented towards traffic generation is the limited factors in what I have read in the file.

FOSTER: The CUP itself required a site leasing plan? Or a site plan?

YEAROUT: Yes it does.

MILLER: There is several in here for each different Parcel as they came in.

FOSTER: Did any of them have a design for this at an earlier stage?

MILLER: Not that I am aware of.

FOSTER: And this was presented to the staff, not to MAPC? The leasing site plan? Or was it presented to Central Inspection.

YEAROUT: The drawing that you are showing, as I understood, from it submittal was Mr. Brown's presentation that it was a copy of a document that he was given or made available to him when the previous developer which I believe was the Ritchie Corporation was talking about a layout on that Parcel and how it would orient on the entire track. Not so much a formal presentation? That was part of the record here?

AUDIENCE: That was from Slawson.

YEAROUT: That was a communication between the two parties. Not necessarily something that was submitted to City Hall. If I understood that right.

FOSTER: Here is what I am getting at then, someone tell me who is the best to answer it then. At some point, a site leasing plan or site plan, as it is required by the CUP was submitted. I am trying to determine who it was submitting. What was the final agreement to the site plan. And then following that, I gather there was a separate plan submitted to Central Inspection on which the permit was issued.

MALONE: Those are these. They had to be submitted to Central Inspection for approval.

FOSTER: And those construction drawings shows what we are looking now.

MALONE: That is correct.

PITTS: They did not amend the original CUP.

FOSTER: But what was approved. Did the construction plans follow the approved site plan?

MILLER: Often times they submit, for example, most of our CUPs require architectural compatibility among buildings. Those wouldn't come in at the same time. They are submitted to Central Inspection. Many times the plan reviewer will bring down the page or the construction drawings and have that signed off by planning staff as part of their overall review of the total package of construction drawings.

YEAROUT: If it helps, the current CUP drawing that shows an approval date of February 9, 1994 approved by City Council, for Parcel 6A shows building footprints, it shows parking layout and internal circulation. There is some reference on-site to signage but there is no other detail in terms of individual tenant spaces, other internal uses within any of the buildings. That is true not only of Parcel 6A, but for all practical purposes all the other parcels within the CUP. The kind of detail you are talking about on this leasing plan is not a part of the CUP and to my knowledge historically that kind of detail has never been made a part of CUP in order to continue to grant as much flexibility as possible to the developers to be able to respond as the market place changes over time.

FOSTER: So the wording we are concerned about is on this document but there is drawing on the CUP.

YEAROUT: No the drawing does not specify location of trash receptacles in any of the Parcels that I can see on the entire CUP.

FOSTER: Presumably that should show up on the site plan.

YEAROUT: That is submitted with the construction drawings for approval from Central Inspection.

FOSTER: That is what that is?

YEAROUT: Yes Sir.

FOSTER: So that is a site plan and a building plan?

YEAROUT: There are construction drawings as well as a site plan for that particular building submitted to be reviewed for conformance to the CUP as well as code requirements for the structure.

FOSTER: Thank You. Any questions of the staff or Mr. Schroeder. I think we should ask the applicant, Mr. Stark representing them and Mr. Brooks, is there anything that you have heard that you would like to comment on.

BROWN: One thing I wanted to point out about our trash facility. Our trash enclosure that exists at the west end of our property. I bought the hotel in 1989. It was built in 1985. The entity that sold it to me was Slawson Development/Slawson Companies so that facility was located there by them. It sits off, it hangs out off to the west end of the property. It actually protrudes out there and when you access either of the two buildings in proximity to that enclosure, the sight line, the view out of one building is due south and the other one is to the due northeast. The building out of the sight line. It is virtually at the back of our property and on the other side of it is an empty field. So the impact of it I am not sure what it has to do with this but it does not impact any of the adjacent property owners to me. Which this does going back to paragraph 16 in the CUP that this impacts me as an adjacent property owner. The CUP or actually the other big plan here shows the access drive coming off this other street extension heading north, not the way they have done it now. I think that is a major difference. You are talking the difference between being able to screen this from me and not. You can see from the slides we look right into this. Where as if the drive was oriented the way it was indicated here it would not be half the issue. But it is almost as though they went out of their way to do it this way. I am the last person that they took into consideration.

FOSTER: The trash collection center there on 21st Street is that what was envisioned this might be?

BROWN: Definitively. Yes from the very beginning that set a precedence. They built that building first. That door and all that. I do not remember when that opened but it has been there more than a year. That was the first building that they did after the restaurant. Definitely, yes that is what I pictured would happen with any other building they did.

PITTS: One of the provisions is that the refuse collection be entirely enclosed within a

building. Does the fact that the gate there does not go up overhead. Does that bother you as being partial enclosure?

BROWN: I think there is sight and smell. I think the people that work in the stores are going to be eating lunch. They are going to be throwing away half eaten fast food there will be food in there. You can not just say that is just going to be boxes and paper. There is going to be people who live in these buildings. I think the smell aspect, the sight of it is unsightly. Certainly compared to the other slide that shows the garage door with the 3-0 passage door. Night and day difference I think, what is represented there.

FOSTER: Any other questions of Mr. Brown?

BROOK: Sorry to be a little slow on the uptake. I do recall the rationale now for the opening above the doors. We recognize as opposed to most trash enclosures is going to have a roof and be vertically completely enclosed. We felt it would be better to have the openings above the doors to allow light for access during the daytime rather than having the light switch out there. The people using it would have to use a light switch all the time.

I would like to say I have practiced architecture in Wichita for 30 years and I have designed a considerable number of retail buildings. This is the only CUP that I have ever seen that required a trash enclosure be housed completely within a building. The developer has taken every consideration for the benefit of Mr. Brown that he could think of. We tried to consider every aspect and alleviate the negative impacts as best we could.

This building is going to have a point of access on the north side. Anywhere along our north side is adjacent to his property. We simply had no alternatives but to locate it somewhere in this avenue. So we made every effort we could to down play the design to not draw attention to it, to screen it and to virtually, the idea was to make it disappear and we feel like we have done our level best to accomplish that.

MALONE: It is probably an unfair question. If you owned the hotel where Mr. Brown was, and you were designing this trash enclosure as we go through this. You could probably consider this a building this trash enclosure is about as good as it get. But if you were the Architect designing this trash enclosure in this building and you owned the Inn at Tallgrass would you take into consideration the view and the location of that door? Relative to the front door of where the front door of the Inn?

BROOKS: Frankly, I do not think it makes a lot of difference whether it is the present location or on down the line. We did not have the opportunity for on down the line because mid-way along our common property line we have this passage way. It is our desire that the patrons at the Inn use that as an access way to the shopping center. It is an open air pass through between the two building of Phase II and Phase III. We certainly did not want to have this in that locale because that would have been a more negative

impact in my opinion. Again, the facilities that the Inn at Tallgrass has for their own trash. We are generally twice as far away from any of their facility then their own trash enclosure is. Their own trash enclosure is highly visible from residents doors opening right out onto it. It has to be seen as they pass to and from their units. In my opinion, it is certainly much more impact then this. This would be considered very minor by comparison. This is only seen as the person is leaving having registered. As you approach this from the south, the photographs that we have bear evidence that you can not even see the trash enclosure as you come at it from the south and the west. The only time that this view will be seen as a person is exiting the drive through of the office area.

ROGERS: Mr Brooks, from a construction cost standpoint, what would be the difference in cost between this set up and one with an overhead door? If you were to retro-fit this with an overhead door? New construction which one costs more?

BROOKS: Probably this one. The doors are custom fabricated steel doors. Whereas the overhead door is simply a standard stock roll up door. In terms of just the door comparison it would be more expensive.

ROGERS: When you design buildings like this do you give the owner options like that or is it just at you recommendation?

BROOKS: We consider options.

FOSTER: I believe we have heard everyone. I will now close the discussion and confine the discussion to the board itself. I would like to comment and I do not know whether the other members share this thought or not. We have had I guess this is our third appeal.

Mr. Schroeder, we have seen you three times over the years that I recall an Appeal is made. We have some discussion up here about whether it represents equity or hardship.

Mr. Rogers you were asking cost, the applicant, has presented concerns about the value of this to the Inn and those kind of things. My impression of this is that we are interpreting what the CUP says we are not necessarily here as I see it to sort out hardship and I see our attorney head-s is going up and down.

DICKGRAFE: Yes.

FOSTER: We are not here to be concerned about equity so to speak we are here to interpret what the regulations or intent of the CUP said. Whether the other members have any other comments on that. We have had discussions about that. Now we have allowed the applicants to present things that do present hardships, that do present equity, and I think to me it is heightened their concern, importance of a decision we need to make. But

I do not know that is the important part of this. The question is we have a paragraph in front of us. All of you have that in front of you? Hours of trash? I would have a lot of concerns whether they are actually going to contain themselves to 8 to 5 p.m. But that is something for someone else to enforce. I have been focusing on the words entirely enclosed. What that means. I think CUP-s are taken very seriously. They are known as zero zoning. It means you are not suppose to be changing it very easily. That is why people go through the trouble to word this as carefully as they can. I think the Board needs to look at it in the essence of what the words were put in. Incidentally, these were added to the PUD this was not something originally put in 1989 and just left there. This was added in 1993 as an addition to it. Somebody must have had some importance to it. I think we have the question in front of us whether a separate building is a building. As you know whether this then is a building itself. Are there other comments the members would like to make before we get deeper into this?

PITTS: Mr Chairman, I would only also want to also mention the one word in there entirely. We are being asked to interrupt the decision of the Superintendent and the decision he made whether or not he made the correct one. He has told us that he does consider this as a building. In saying that also assuming that he is interrupting this structure that houses the trash container to be the container is entirely enclosed. That is the one word that I would have problems with.

FOSTER: I agree with you Mr. Pitts. The word entirely means that somebody went to some extra trouble here. They just did not say enclosed. They said entirely enclosed. That wording does bother me. Any other member wish to make comments on that?

MALONE: Based on Article 2, Rules Of Construction, Section 2 B this is a building. Plain and simple. It has a roof, and it is supported by walls from the stand point of whether or not this is a building, I got to agree with the interpretation that Mr. Schroeder has that this is a building. Whether it is entirely enclosed or not that is entirely a different question.

FOSTER: If I might point out Mr. Malone, the wording says trash collection will be entirely enclosed. That is were the words go. The words entirely enclosed go with the words trash collection. I do not see this building necessarily, I believe you made a point earlier that the building has to be enclosed within a building so to speak. But I think it said that the trash collection will be entirely enclosed. It has been pointed out to us they are concerned about odor and I suppose a purpose here and although it has not been said perhaps leaving it open is to provide some air. The point was made that it provided light to enter the building. But it also provides air which can go both ways I presume.

PITTS: Are we going to be required to pass judgement as to whether or not that structure

is entirely enclosed. Or is it necessary?

FOSTER: I believe that is the real essence of what... It is not only that Central Inspection needs to make consideration of what a building is. But they have to read this entire sentence which they have.

PITTS: Maybe we should refer that question to legal?

DICKGRAFE: Your responsibilities are to affirm, reverse, or affirm in part. If it is your interpretation that it was a correct interpretation, that it is a building but the structure is not entirely enclosed. That is an appropriate decision of the Board. If that is ultimately what you determine that the facts and the wording of the CUP says or requires. If I answered your question.

PITTS: I think you did.

FOSTER: I would like to take a moment, we do have material from our Assistant City Attorney. Mrs. Dickgrafe. I think we ought to take a moment to read this. Has a copy of this made available to the applicant? Are they aware of this material?

DICKGRAFE: I can provide them with one.

FOSTER: It is public information. If you all wish to see it. She has merely given us appropriate wording to either affirm or not affirm the decision of the Zoning Administrator. I think you should have a chance to see it. I am going to take a moment here to read this.

PAUSE

PITTS: The fourth paragraph up on the second page starts@If the board determines@and shouldn't it end with Aconclude that the proposed trash collection receptacles do not comply with the provision of the CUP?@

DICKGRAFE: Yes that is correct.

FOSTER: Everybody will insert and if the applicant can hear us that it should read DO NOT comply. Is everyone clear on that?

FOSTER: To move this along I suppose the chairmen can make a motion. I will explain my main concern is that someone went through a lot of trouble when they wrote this PUD and put in that the trash collection will be entirely enclosed. I do not have a problem about a building. I think that is the lesser issue here. But somebody said that this would have

to be entirely enclosed within a building. I am very impressed by those words.

PITTS: Mr. Chairmen if I may interrupt a minute. I wonder if we may want to consider the fact that we asked Mr. Brown when he was at the podium. If he considered that structure entirely enclosed. I do not think that is a factor in his decision to appeal Mr. Schroders decision.

MALONE: We are hearing what is Mr. Schroder=s interpretation. With all do respect, irrespectively, what Mr. Brown=s concern or thoughts relative to where that building is located or position or anything like that. So I respect your point on this. I am not sure it is relative to our decision.

FOSTER; I am looking at Mr. Brown=s letter or his appeal. I do not think when you have an appeal equity unfortunately as it may seem to many people who might be present I am not sure that equity is the issue here. It is a matter of simply interpreting something and let the chips fall as they may. CUP=s are very definitive. That is why we have Community Unit Plans for people to create their own zone so to speak. This was a provision in it.

FOSTER: I would make the motion having considered the entire record regarding this matter and having heard the evidence as presented to the Board here today. I move that the Board make the following findings.

1. That the Board of Zoning Appeal has jurisdiction to hear this appeal, pursuant to KSA 12-759 (d) and Section 2.12.590 of the Code of the City of Wichita Kansas;
2. That the Board makes the following findings of facts:
 - a) That the Zoning Administrator pursuant to Article V, Section E (15) of the Wichita-Sedgwick County Zoning Code had the authority to make the interpretation of the CUP issued on December 7, 1998.
 - b) That the language of the CUP which mandates the Atrash collection will be entirely enclosed within a building@ is not complied with because of the emphasis upon the trash collection being entirely enclosed by the proposed structure set forth on the site plan for the Building Permit No. 98-010731.
 - c) That the structure outlined by the plans for the building permit. I am going to drop out number seven, I mean (c). I do not know that we have to make that determination.

DICKGRAFE: No you do not.

FOSTER: So I would drop out number (c) entirely. We can drop out number (d), it is not our concern as to whether the location is unreasonable or not related to the adjacent property. This is not a variance. It is not a hardship case. It is interpretation. So I would eliminate (d) and I would add e) The interpretation made by Kurt Shroeder is not supported by the language contained in the language of the CUP.

3. The Board further finds that the interpretation of the Zoning Administrator as set forth in his letter of December 7, 1998 is not supported by the evidence presented at this hearing.
4. The Board further finds that the appellant has met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, I MOVE THAT THE INTERPRETATION OF THE ZONING ADMINISTRATOR HEREIN BE REVERSED.

PITTS: I SECOND THE MOTION.

MALONE: I would like to make a comment. I think that this motion based on what you said could be affirmed if that door was fully enclosed.

PITTS: From what the chairmen has read to us I concur with your interpretation.

MALONE: So if that structure is entirely enclosed then I would agree with you.

FOSTER: These are comments that they are adding to it. Mr. Yearout.

YEAROUT: Mr. Chairmen, I would want to point out, and it was articulated in Ms. Dickgrafe memoranda to you that the board has the latitude to both affirm the decision of the Zoning Administrator, to overturn the Zoning Administrator, but also to modify. You have the latitude within the action you take today to uphold his decision partially and then modify partially if you feel that some other step needs to be taken. The reason I raise that point is if that is the direction that the Board is going, it short circuits the process rather than simply to reverse him today and leave it back to the Zoning Administrator to make an interpretation. Then this is potentially appealable again. And it is within your latitude as articulated in the Zoning Code, to modify the decision of the Administrator as it applies to the issue before you.

PITTS: Based on that Mr. Chairmen. This is one of the reasons why we discussed this. I would be in favor of taking a vote on this. I am going to be in opposition to the motion as it has been made even though I did second it. We do have to have a 4-0 majority to proceed with this. I would also be in favor of modifying this

to make this an entirely enclosed structure and then saying if this were accomplished I feel the Administrator, Mr. Schoerder, made a correct decision.

YEAROUT: I would offer if it is appropriate that if the maker of the motion and the seconder, would accept language along the line of indicating that the portion of the Zoning Administrator's decision relative to the issue before you on appeal is affirmed with the exception that the doors are to be completely enclosing the structure or words to that effect. So that the Zoning Administrator was right, however you feel that the CUP provisions do require that this building be completely enclosed then you have accomplished what I think is part of your mission if you will, to determine whether the Zoning Administrator was right and if not to have the ability to tweak that decision so we can cut to the chase and get to the end of this.

FOSTER: I do not think the BZA can add conditions and I do not think you are saying that Dave.

YEAROUT: No this is not adding conditions.

FOSTER: We are talking about modification of the understanding of what this means.

YEAROUT: In my opinion that includes the ability to specify what would need to be done on this facility to make it comply with what you believe the intent and purpose of the CUP provision are.

FOSTER: I would accept that idea. Because it does bother me that it is not entirely enclosed. I do not know if it bothers other members. I suppose the doors bother me a lot. It looks like a swinging door thing that you find at a McDonalds where they have their outdoor dumpster and so forth.

ROGERS: I agree Mr. Chairmen, from a health stand point and safety stand point that the enclosed doors are easier to look at.

MALONE: My interpretation of what Mr. Schoeder's interpretation of this being a building is fair. I think he interprets this as being a building. But it is not entirely enclosed. If this building was entirely enclosed by an overhead door of some sort I think one thing is accomplished and that is I think the patrons of the retail shopping center are going to take greater care of how they handle the trash in there because it is going to feel more like a room then just a trash dumpster.

FOSTER: I agree with you.

DICKGRAFE: As a point of procedure you may want to vote on the motion that is on the floor. If it passes fine. If it fails fine.

FOSTER: Is it easier to withdraw the motion.

DICKGRAFE: That would be an option. I think if we are trying to amend a motion that has already been seconded trying to make a record on that is going to be impossible.

PITTS: I will withdraw the second.

FOSTER: I will withdraw the motion. I am going to make a new motion. Having considered the entire record regarding this matter. No wait a minute. Go the other way now. I appreciate Mr. Yearout's observation of this I think it helps the discussion. Alright.

FOSTER: Motion. Having considered the entire record regarding this matter and having heard the evidence as presented to the board here today, I move that the board make the following findings:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759 (d) and Section 2.12.590 of the code of the City of Wichita Kansas;
2. That the Board makes the following findings of fact:
 - a) That the Zoning Administrator pursuant to Article V, Section E (15) of the Wichita-Sedgwick County Zoning Code had the authority to make the interpretation of the CUP issued on December 7, 1998.
 - b) That the language of the CUP which mandates that ~~A~~rash collection will be entirely enclosed within a building@is not complied with by the proposed structure set forth on the site plan for the Building Permit No. 98-010731.
 - c) The structure outlined by the plans for the Building Permit constitute a ~~A~~building@as defined by the Uniform Building Code and the Wichita-Sedgwick County Zoning Code.
 - d) I would delete ~~AD~~@it is not an issue here.
 - e) I would delete ~~AE~~@
 - f) And the I would include under ~~AD~~®, Replacement for ~~AD~~@that the design for the building. Let me try again.

PITTS: Could we just add, IS? Would that satisfy the intent?

FOSTER: Ok Let's go back to ~~AB~~@again, Mr. Pitt's has pointed out. Alright.

- b) That the language of the CUP which mandates the ~~A~~rash collection will be entirely enclosed within a building@will be complied with if the opening of the door area would be entirely enclosed and a) shall we specify a) And a rolled overhead

door is installed so that the definition of completely enclosed can be met. And then we go on with the proposed structure set forth on the site plan for the building permit number so and so.

SIMMERING: You want that in B?

MALONE: Can I make a suggestion. Under paragraph three we will say this.

3. The Board further finds that the interpretation of the Zoning Administrator as set forth in his letter of February 23, 1999 was reasonable and is supported by the evidence presented at this hearing so long as the structure contains an overhead door or roll top door in nature to that one located on Phase I.

MALONE: So what we are saying is this, we will affirm this as long as that door is on there.

DICKGRAFE: So what you are doing is affirming the portion of Mr. Schroder's interpretation that said this is a building.

MALONE: Yes.

DICKGRAFE: You are modifying his interpretation that it is fully enclosed as it is now which is not fully enclosed and that with the addition of this door this structure is in compliance with the CUP.

MALONE: That is correct.

FOSTER: That means we would go back to B and take out what I said before. And we would leave and that would say is not complied with.

MALONE: You will leave not out. It is complied with.

YEAROUT: Mr. Chairmen, if I may to help. We have got the spirit and intent of the motion. The record is really reflected within the resolution, you simply direct that the legal council draft that to clarify the structure of the motion I think we are sufficient. We do not need to split verbs at this level.

FOSTER: If you look at B that is our problem. We are not upholding the fact that the.

YEAROUT: You are upholding in part and modifying in part.

FOSTER: B would have to changed then. Do you agree? That is what I want to make sure. **AB@** is changed to reflect the spirit of this that the entirely part is not complied with. Is that clear now?

MALONE: Yes.

FOSTER: I would leave out the word was reasonable, that is not the issue here. In other words council if you leave out was reasonable and add Mr. Malone's point.

SIMMERING: As long the structure contained with a rollover door.

MALONE: Roll-up overhead door.

SIMMERING: Or an enclosure on top.

MALONE: Similar nature.

SIMMERING: Similar nature to the site plan? Was that Phase I or Phase 2?

MALONE: To the trash enclosure on Phase I.

FOSTER: Is there a suggestion council on how we would handle number 4. The burden of proof is on the applicant here. Could we say.

DICKGRAFE: I think if you are modifying.

FOSTER: No, he has meet his burden of proof.

DICKGRAFE: As to a portion of it that is true. That he has met his burden of proof to show that the interpretation which concluded that the structure was fully enclosed was in error. And that the Zoning Administrator interpretation is hereby modified in accordance with the finding and facts made by the board.

FOSTER: Very good.

FOSTER: Therefore based upon the foregoing, I move that the interpretation of the Zoning Administrator herein be modified and affirmed.

PITTS: SECONDED MOTION.

Motion carries UNANIMOUSLY 4-0.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that having considered the entire record regarding this matter and having heard the evidence as presented to the Board, the Board makes the following findings:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759 (d) and Section 2.12.590 of the City of Wichita; and
2. That the Board of Zoning Appeals, pursuant to Article VI-E (2) of the Wichita Sedgwick County Zoning Code has the authority to reverse, affirm or modify the interpretation of the Zoning Administrator.
3. That the Board makes the following findings of fact as presented in the record:
 - a) That the Zoning Administrator, pursuant to Article V, Section E(15) of the Wichita Sedgwick County Zoning Code had the authority to make the interpretation of the CUP issued on December 7, 1998.
 - b) That the structure outlined by the plans for a building permit constitutes a building as that term is defined by the Uniform Building Code and the Wichita Sedgwick County Zoning Code.
 - c) That the language of the CUP which mandates that trash collection will be entirely enclosed within a building is complied with, so long as the existing structure contains an overhead or rolling door which fully encloses the northern portion of the structure, similar to the one endorsed in Phase One of the development.
4. The Board finds that the interpretation of the Zoning Administrator, as modified by the Board's findings of facts set forth above, is supported by the evidence presented at this hearing.
5. The Board further finds that the Appellant has not met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED ON THE FOREGOING, THE INTERPRETATION OF THE ZONING ADMINISTRATOR IS AFFIRMED, AS MODIFIED BY THE BOARD BY ITS FINDINGS OF FACT SET FORTH IN THE RECORD.

4. **Case No. BZA-2-99**, Roy A. Alexander, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the rear yard setback. The existing building was built with a 5' rear yard setback. Applicant wishes to add on to the building and maintain the 5' setback in lieu of 15' that is now required on property zoned "LC" Limited Commercial and legally described as follows:

Lot 11 and 12, Block 11, Beverly Manor, Sedgwick County,

Kansas. Generally located at Lincoln and Edgemoor (5520 E. Lincoln).

YEAROUT: Reviewed the comments from the Secretary's Report and presented slides of the area.

SECRETARY'S REPORT

CASE NUMBER: BZA 2-99

OWNER/APPLICANT: Roy A. Alexander, P.O. Box 781601, Wichita, KS, 67278 (Owner)

AGENT: Don Folger, Jr., 234 S. Topeka, Wichita, KS, 67202 (Agent)

REQUEST: Variance to reduce required compatibility setback from 25 feet to 5 feet in order to permit addition on to an existing building.

CURRENT ZONING: ALC@Limited Commercial

SITE SIZE: .3 Acres

LOCATION: Northwest corner of Lincoln and Edgemoor (5520 E. Lincoln)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant presently owns the building on the northwest corner of Lincoln and Edgemoor (5520 E. Lincoln) which is currently occupied by the Lincoln East Laundry and the Southeast Carry Out restaurant. This is a 2,923 square foot building (33'-4" by 84'-8") that is presently 5 feet from the north property line and 8'-2" from the west property line. The overall lot size is 13,400 square feet (100'-by 134') and has the existing parking located to the south and east side of the building.

The applicant proposes to removed the east 20 feet of the existing building and construct an addition on that would add 40'-4" onto the east end of the building. This would place the east face of the building 20'-10" from the east property line. A total of 24 parking spaces would be provided along the south side of the building.

The applicant requests a variance of the setback requirements along the north property line in order to construct the building addition. The Unified Zoning Code would impose a normal 15 foot setback along this property line; but with the property to the north zoned ATF-3@Two-Family Residential, the compatibility setback would increase that setback to a total of 25 feet. The applicant wishes to construct the building addition equal to the width of the existing building and keep the existing setback along the north property line of 5 feet.

One letter has been received prior to the preparation of the staff report from the person purchasing the single-family residence at 847 S. Edgemoor, immediately to the north of the applicant's property. That individual raises concerns about the condition of the fencing and the location of the trash dumpster.

ADJACENT ZONING AND LAND USE:

NORTH: ATF-3" - Single-Family Residence
SOUTH: ATF-3" - Southeast High School
EAST: ALC@ - Retail business
WEST: ATF-3" - Single-Family Residence

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the existing building was constructed to match the setback requirements in effect at the time it was built. Those setbacks permitted the building to be 5 feet off the north property line, which provided adequate room for the parking and still have a building large enough to accommodate a business.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the existing building will remain and the new addition will be no closer to the adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code may constitute an unnecessary hardship upon the applicant inasmuch as the higher setback requirement would make it near impossible to construct any building addition onto the property; which would impose a hardship on the applicant.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as no encroachments into any public easements or any other public areas.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the Unified Zoning Code inasmuch as the reduced setback will permit the applicant to construct the new building addition and provide an overall improvement to the property.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the compatibility setback on the north property line shall be reduced from 25 feet to 5 feet.
2. The applicant shall be required to construct a new wood screening fence, six feet in height, along the north and west property line.
3. The applicant shall prepare a revised site plan showing the location of the trash receptacle and the manner in which screening of said trash receptacle will be made. Also, the revised site plan shall show how the property will be brought into compliance with the Landscape Ordinance of the City of Wichita. The revised site plan and landscaping plan shall be submitted for approval by the Secretary and the building addition shall be constructed in conformance with the revised site plan approved by the Secretary.
4. The applicant shall obtain all local permits necessary to construct the building addition and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.
6. Final review and approval shall be constructed by engineering.

FOSTER: The fence that is being proposed, is that six feet come to all the way out to the end of the property or does it start down?

YEAROUT: No. It will taper down. The code specifies the manner in which that occurs. And the expectation is that they will comply with the code in that regard. Tapers down to I believe 3 foot height as you get out closer

to the front of property.

FOSTER: Any other questions for staff? Thank you.

DON FOLGER, JR., 234 S. TOPEKA, WICHITA KS, 67202, AGENT FOR APPLICANT,

we are in concurrence with what the staff has recommended here with maybe a little bit of clarification with a few of the items. First of all, this site if this is not allowed, I am kind of going through the thought process of the items we have to consider for a variance. It does create a hardship because we would only be left with 20 feet off a 31 foot building, about 11 feet that we could add on. We could still add on without any variances to take that existing restaurant type building down and add on the 40 feet but it will only be 11 foot wide. It would be a hardship on the lot. It also we feel we are trying to improve the location or the site. There are some inherent problems with this site, and this was discussed at the CPO meeting and I think that is why it was voted down in my opinion. This site is right across from Southeast High School. The other day when I was there with Mr. Alexander we were walking around the site. We walk around the corner and we encounter about a half a dozen kids back there. I am not sure what they were up to but it was during school time, they were hanging out. That is what happens is that between that fenced area and to the North and the fenced area to the West, they just get lots of kids hanging out there. We were going to, even without the staff's recommendations, put up a wood fence. The owner wants to do that. He was going to run it right where the staff is recommending. The difference is that he is going to enclose and go from the building out and close that off so that no one can get behind the building. It causes him problems too with vandalism and so forth. That is the issue that was causing problems with the neighbors is the fact that there are people there that, the kids during the daytime and even people visiting the Landomat and the kids that are a part of the parents there and they are not watch or whatever are getting back behind the building. We have addressed that issue and we are taking it one step past what the staff is recommending by enclosing that and locking that up. There will not be access in that area. We have not determined exactly how we are going to meet the requirements of number three yet. We will work with the staff, that has to do with the landscaping and a trash enclosure. As you saw in that one film there is a BFI dumpster and a grease dumpster for the restaurant and the grease dumpster will not be there anymore so we will just have the one dumpster that we will have to contend with, but we will make that a part of whatever proposal we bring in for final plans. At this time we are thinking that it will be to the east of the new addition in that open area that is right there and it will be enclosed as part of the fence enclosure with gates and so forth on it. Really do not have any other issues that we are total compliance with what it said. And the issues that were brought up at the CPO did have to do with the congregation of people and keeping the lots clean and so forth. Mr. Alexander was informing me just a little bit ago that the issue of keeping the site clean, just because there is a lot of people going behind the building and out in the lots and just kind there that are not a part of his business. Their rent agreement is that they clean the lot up ever other day and pick up trash and so forth, his people, his employees, do it once a week on the weekends they go behind the building, clean up behind the building and so forth. They make an effort to try and keep it up. I know that there is in anything like that there is going to be where the kids and everything are going to throw things in the neighbors yards and stuff to. I do not think that we can control that but I think that we are helping it with this fence that we are going to put up and making a place where that can not get in there unless they jump the fence. Now they can still

do that but, that becomes trespassing a little more than it is now. But now you walk back there and they just run off. With the fence up it might be a little bit different. Any questions for me?

FOSTER: Mr. Folger, would it be a problem to you if a condition was included that required you to put the fence to the building to prevent this intrusion of the kids.

FOLGER: No it would not. We are planning on doing that anyhow. Even if you do not make that a part of it we are going to do that. It is a real deterrent to that site. Mr. Alexander has on his back door, he has put a big metal bar that he has welded to the middle of the door with a paddle lock because just a standard key lock does not do any good. They have broken that. His electrical transformers and stuff are back there and he just does not want the kids missing with them. So he does want to close it off.

FOSTER: Have you considered whether that would increase crime. This enclosed area? Is this going to be, looking at the opposite stand point?

FOLGER: I do not how you can determine whether that can happen. They can still get there by jumping the fence. The six foot wooden fence you can get over that fence if you really have the desire to. Then you are back behind closed doors so to speak. I do not know how you can prevent that. We can put up an eight foot fence, but I do not know that is going to help the situation a lot. The main thing is to put the fence up, right now they can just walk right along there and behind the building. It is a deterrent in how it is.

FOSTER: Any questions?

MALONE: Is the architectural style just going to come across the face?

FOLGER: Yes. Same as what is there now.

MALONE: You are tearing down the restaurant building and just adding on to that to the east side?

FOLGER: Yes.

FOSTER: Will there be any windows or access on the north side of the new building?

FOLGER: No. We are putting a double door on the east end that would give access to what would be the working parts of the laundry mat, not the public part of it so that there is some laundry that is brought off in from people who do not do their own laundry it is brought in they process it with their staff and then send it back out. So there is a set of double metal doors on the east end that will be down there.

PITTS: Mr. Folger, as a statement contained in the CPO report that is attributed to you when the question was raised as to how far would this building could be extended to the east towards Edgemoor. Supposedly you stated that it would line up with the houses North there. Did you actually mean the houses or the setback?

FOLGER: What I was getting at is, I went out there with a tape measure. I am not a surveyor so I did not survey this to justify. But, we went out and assumed the back of the sidewalk is the property line. What we were working off when we drew our plan was actually a site plan from when the building was built and the plans we got a permit from. So we used those dimensions for doing it. But actually on the site we went out and just measured back to just eyeball to where it was to answer a questions that might come up. When you measure back the 20 foot and 10 inches that I show there on the plan, you are pretty much lining up with the front of the porches of those houses, running down through there to the North. The setback along there is 20 feet so I am assuming that most of those houses were just pushed right up to the front setback, those are not very deep lots. So during the building time of those houses they would have put them at the front of the setback line which is 20 feet. Our building is roughly going to line up with those.

FOSTER: Any other questions of the applicant?

YEAROUT: Mr. Chairman, if I could this is for Don's notice too. Late last week city attorney Mike Lindabak caught Dale Miller downstairs and he reminded me just a second ago.

FOSTER: The City Engineer or City Attorney?

YEAROUT: He is the City Engineer and he indicated that based on this site plan they felt that there was a need to close that drive entrance. Based on what I just heard you say that there may be some overhead door access over on the east end of the building. I would want to pass on that right now, the Traffic Engineering Department is of the opinion that the north driveway needs to be closed. But in light of what you are saying, and this plan did not indicate that there was access on the east end I would like the Board to at least note that comment from the Engineering Department and as noted in here we talk about a revised site plan, we need to include within that process a review and approval through the Engineering Department to make sure that they are comfortable with retaining that drive. As I understand from Dale, the basis of that request was that they saw no purpose or need for the additional drive and so they want him to close it. But you have indicated today that there is a purpose and a need. It may resolve itself very easily with some communication but I did want to pass that on so that the Board is aware that the communication did come.

FOLGER: Can I address that just as a response. Like I said, those doors are there and that is part of what we want that drive in there and the other reason is parking spaces. Our data sheet we are showing 24 parking spaces and we are only required fourteen but when the building is in operation as it is right now, the parking lot is fairly full and when you add this extra laundry the experience is that you need more spaces than what is required per the zoning book. So we are trying to keep as many spaces of parking as we can so that is why we want the other drive left open to get to that door and not to eliminate parking spaces and also to get to the

trash dumpster. We will be willing to work with staff to figure out what will work best and if that is a communication thing, we can make it work versus, not getting to build a building. I think we can make that work.

YEAROUT: Thinking out loud, I would think of running a drive up and making the area between the edge of the parking lot where the drive to the east entrance, grass with maybe and some shrubs or something would help to meet the landscaping requirement and would differentiate why there is a distancing between those two points. That can be worked out.

FOLGER: That will probably be the first thing that we do and come up with our landscaping plan and submit that before we go on to construction documents for a permit.

FOSTER: Do I understand that, Mr. Alexander that the site plan that I am looking at, given to us, it does not show these doors, right? Where are they? I do not even know where they are.

FOLGER: They are on the east end of the new building addition. Actually we did not show. All that area is already in concrete, that is to the east of the new addition clear to the property line to the north. We are just assuming that would all stay in concrete. We have got to work out our drainage but it pretty much is going to stay in there.

FOSTER: So vehicles back into this or pull in this how?

FOLGER: They would have to probably pull in and it is not really drawn conducive to the circulation. That is what we are going to have to work out with what we talked about. The other way we could do it is to move those two spaces clear to the back of the north end of the property. Being now I would have to get an interpretation of this but since we are getting a variance for the setback to be 5 feet usually your parking can go up to the setback line. So we would be able to move those back and then have a drive kind of in front of them to get to the doors that way we are not losing our parking spaces. We would have access to everything. We have still got to make a space for the dumpster. There are somethings that we will have to work out.

PITTS: It is your intent to submit some revised plans that are going to show among other things the location of the trash container?

FOLGER: Yes.

PITTS: I am wondering if due to the opposition coming from CPO on this and the incompleteness of the existing plans that have been submitted, if we have enough information, Mr. Chairman, in which to make a decision on this.

FOSTER: It does raise that question. I need just another moment to finish. I am a speed reader but not that fast.

FOLGER: I would like to comment on the last issue that was raised, whenever you are ready. In regards to postponing the issue, I was at the CPO last night and I really feel that the CPO=S issues were not with the matter at hand which is a variance to reduce the setback. Their issue is the fact that we have kids hanging out, we have got trash, we have got problems that are a determinate to their neighborhood. If this variance is not granted probably what will happen is that the resturant will be taken out and the laundry will be expanded into that part of the existing building left as is. You still have an area behind that, then the owner is up to him to decide, do I really want to spend the money on the fence and all those kinds of things with the existing structure. Whereas, with the new construction and the way he is wanting to do it he is upgrading the whole sie and making it so it is a better situation for the neighbors and it will all be taken care of. I think the CPO=S urgency was really not with the issue at hand. The other thing that I wanted to say and staff might need to comment on this is that my experience in the past is that if we are going to work out landscaping problems, screening problems, as long as we work in the confines of the zoning ordiances that they would be, as long as we work within those then it is not an issue of this, or our we getting a variance? It is an issue of working within the constraints of those rules and regulations and the task at hand is making sure that we stick to what we are asking for which is the variance and not how the neighbors would get along in regards to something that does not apply to the variance.

ROGERS: Mr. Folger, help me with one thing, a minute ago you mentioned that you still had some things to work out. Like screening of the dumpster. Referring back to our report from the CPO, someone has quoted you as saying that the trash dumpster would be elimanted once the resturant is removed? Is that in error?

FOLGER: That is an error. Last night when I was there I assumed that most of the trash came from the resturant. The dumpster is acutually shared. There are two dumpsters there. There is one that is an oil and grease dumpster and one of the photos shows a brown and the other one is blue one that is a regular BFI dumpster, that is shared between the two of them. They would still need to maintain some kind of a trash dumpster for the landromat. So we would have to do screening for that. The BFI dumpsters there is the one that we would be maintaining in some way. They would have to determine do they still need one that large when the resturant is gone. The little brown one, there is a grease dumpster, would not be necessary any more. But we would still be screening that someway within the zoning ordiances of how you screen trash dumpsters in an open air situation. Basically, with a six foot wooden fence.

MARY COULSON, 852 MARCILENE, I am to the west of the property. I am the second house from the corner and when this went commercial. By the way we had to have six feet on each side of our homes to the edge of our property so there is twelve feet between the houses and that was something that slipped by the zoning commission when they let him put five feet. But he is not a good neighboor, the trash is terrible and it has been two to three years ago that he came around to my front door and knocked on it and asked me to go out to the backyard with him. To see an appropriate place to put a fence with a gate to close off that section. As you see here now he is still thinking about doing that. As far as saying will we won't fix up the fences or anything, that is kind of a threat. If we do not all give in and let him put up his building, then he is not going to do anything to improve the condition of our fences. When that property went commercial, back in 1955, it was agreed that

they would put up fences, privacy fences, around both sides to protect all of us. The north side, an elderly couple lived there and that was back with no air conditioning. Southeast High School was not there. We got a real nice breeze across that area, so that is why they got the four foot fence. But the kids can easily go over that fence. We also have a problem of an alley way there that was not platted in when they platted out the area. And we were also told when we built our home not to build in or not to do anything into that easement that would be the alley way where the telephone poles are. So his fence is right on the border line of that alley.

That easement, or into the middle of the easement. But I am very concerned about him keeping his word on what he is going to do. Because it has never been proven in the past since he has been in that building. My lawn has been set on fire a couple of times, the fire department had to come out once. The kids did or whoever set in on fire the first time did stamp it out on the first one. The second one a neighbor called in. There was a motorcycle that ran up that six foot fence behind my house, bent it over into my trees and bushes, when I discovered it I went over and talked to some of his employees and they said yes he was aware of it. That he had filed insurance on it. I had to go over several months later and ask that the fence be repaired and taken off my trees and plants. That happened again I told him that it would be fine to put some kind of support on my side of the fence, which he did but it was of some of the cheapest material. I am just really concerned about him expanding. If he can not take care of what he has now, how in the world is he going to take care of anything else. It is bad there. That is the largest consolidation of schools across the street on the Southwest property. It is nice because we do not have any planes from McConnell flying over because of the consolidation of young ones. But, a lot of them cross the street there at Lincoln and all those driveways are hazardous to their health and well being. The people that go into the laundry mat they do not care. They are anxious to get out of there when it is over with.

FOSTER: My I ask you Mrs. Coulson, you mentioned that at one time fences were required and they have not been put up?

COULSEN: The six foot fence, we were all given the option of what we wanted. Mr. Edminston, I believe, and I can not remember what oil company he was with. When it went commercial had a small service station there.

FOSTER: Is this a zoning case?

COULSEN: It was at that time they gave us our option.

FOSTER: Who was they? The Planning Commission?

COULSEN: The Planning Commission, incorporation with the plans for the service station. We chose the six foot fence and the elderly couple to the north wanted the four foot fence so they could get the breeze through there.

FOSTER: Do you have any feeling, or have any knowledge now as to what their opinion might be now?

COULSEN: No that is the house that Mr. Smith bought. And it is terrible. The fence is really broken down on that side. On the north side.

YEAROUT: Mr. Chairman, you have a letter from Mr. Smith attached to your staff report.

COULSON: My fence is a chain link fence with the slates in it. The metal slates. Which the younger kids and the teenagers like to pull those out so they can get a toe hold in the fence to climb over it.

MALONE: Mrs. Coulson, I was born and raised in the 600 Block of N Marcilene, howdy neighbor. We have a document here in front of us that allows us to I hate to use the word force, but require this applicant to put a six foot fence up between his property and your property as well as the property of the North. The only way that he can get his variance is he has to put that fence up. So we kind of have him by that with this document. I do not mean to be disrespectful to the applicant. Is that really the biggest concern you have Mrs. Coulson, just the fence and the screening.

COULSON: Yes that and the trash, the noise on the weekends. He is open until 9:00 p.m.

MALONE: One of my points is I am just not sure this gentlemen can control right now, the kids loitering and stuff like that. I think this fence and the security this fence can bring. We were all kids once, I think it is difficult to start climbing over a fence to loiter most of these kids will find another place to loiter.

COULSON: As I say it has been two or three years ago that I talked to him and that he came over to put the fence, shutting off the access to the back of his place. And then he did not follow through with it.

FOSTER: I think Mr. Malone is bringing up now, our member from Central Inspection is not here. But basically we sort of have continuing follow-up here to make sure that things to get enforced. The Central Inspection staff reports back to us on the status of things and so if this were past and if this was required a fence and you let us know. You let Central Inspection know, this would be something that would be enforced. So I think you would find a different situation. Is that the point you were trying to get across?

COULSON: A six foot wooden fence would help a lot in controlling the trash that comes into our yard. I can fill fifteen to twenty gallon trash barrel.

FOSTER: Is this from the operation there? Or is it blowing in from other areas?

COULSON: Very little blows in. I do have a four foot chain length fence on the south. A lot of this is generated in his parking lot by the families that come in to do laundry. While mom is in there doing the laundry the kids and the father-s are out in the parking lot. The father-s are in the parking lot behind the building, climbing fences and whatever, eating, playing radios high level and volume.

FOSTER: I suppose one thing to take into account. What if nothing was done here? What if no variance was granted? You would be where you are today and they would still be able to build a eleven foot addition. They could still build something there and there would be no requirements of fencing or anything else.

COULSON: Doesn't the existing code of a fence existing?

FOSTER: Let us ask Mr. Yearout. Let-s say that they variance was not approved and they wanted the addition

made. Would the addition require any fence there?

YEAROUT: Yes. If the building addition was put on. Our indication from Central Inspection is that it would be enough to trigger the requirement that they would have to comply with the six foot fence. On both sides? North and West? That is debatable. It is a percentage and number game the intent within this variance is to specify that it will be along the entire north and west side. If you take any latitude of interpretation out.

COULSON: It seems to be a threat to me and Mr. Smith that if we do not bow down and say yes sir you can do whatever you want. Then the fences will not be maintained.

FOSTER: You can see that we would have difficulty containing trash and so forth. I do not know who really enforces that.

YEAROUT: It would be Central Inspection, within the extent that the existing size applies to a structure this old. There may be some grandfather rights in affect here that I do not know about. It is not so much to look at it as a threat. If Mr. Alexander, closes down the business and leaves someone else comes in and establishes a new business in this building, it is zoned **ALC@**. There is a wide variety of uses that could occur in here. They make no additions to the building. That would not trigger any additional screening and fencing requirements unless the current codes says that they are suppose to be doing something anyway and that it just has not been brought to the Inspection Departments attention. What is really at issue here it is the addition onto the building that is triggering all these requirements clearly and without the addition onto the building, whether Mr. Alexander stays or whether it is somebody else would open up a permitted business in here it may not change the fencing requirements that exist today.

FOSTER: Is there anything else that you would like us to know Mrs. Coulson?

COULSON: No I think that covers it. Thank you for listening to me.

MALONE: You are welcome.

FOSTER: Any one else to speak to this case? I might say that I do like Mr. Pitt's earlier remark that maybe we need to see something here. How are they going to solve this trash problem. How are they going to contain the traffic flow. I just wonder is that something the Board wants to know or are you going to write that down?

MOTION: MALONE moved and ROGERS seconded that the Board accept the findings of fact as set forth in the Secretary's Report, and that the board find that the five conditions set out in Section 2.12.590.B of the code as necessary for the granting of a variance have been found to exist as follow:

1. That the variance be granted subject to the conditions set out in the Secretary's Report.
2. That the variance to reduce required compatibility setback from 25 feet to 5 feet shall be granted. I site the five findings.

3. The approval is subject to the five conditions set out by the Secretary, including number two. That the applicant shall be required to construct a new wood screening fence six feet in height, along the North and West property line.

6. And I would like to add a sixth item. That final review and approval by the City Engineer of the northern most driveway shall be conducted by City Engineering.

FOSTER: Do you want to add that the fence be gated? On the West and the North.

MALONE: Yes that is fine. And that the fence be gated and connect the fence to the building.

FOSTER: On both sides. I just want to make sure that there is no access to the north. They do not have any access. Doors or windows or anything like that. In other words Mrs. Coulson has a back yard to the west but Mr. Smith has merely that six feet to the north and we are reducing that amount and I just think we ought to make sure that there is no openings on that north side of that building.

PITTS: Put a gate on there so they the kids can not get back there.

ROGERS: That is a building code issue is it not?

YEAROUT: That is all existing building. They are not proposing new additions in there. Are there walk doors out the rear?

FOLGER: Only from the west side. There is a walk door out the west side but there are no windows.

PITTS: Didn't the applicant state that he was going to close off that space between his building and the fence to the North because he was having problem back there anyhow.

FOSTER: Is the motion clear to all the member than?

Motion carries 4-0.

FOSTER: Now, Mrs. Coulson let us know and let staff know if we have a problem here and they will bring it to our attention.

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the compatibility setback on the north property line shall be reduced from 25 feet to 5 feet.
2. The applicant shall be required to construct a new wood screening fence, six feet in height, along the north and west property line.

3. The applicant shall install gates between the building and the fence on the northeast and southwest corners of the building to improve the security of the area behind and along the side of the building.
4. The applicant shall prepare a revised site plan showing the location of the trash receptacle and the manner in which screening of said trash receptacle will be made. Also, the revised site plan shall show how the property will be brought into compliance with the Landscape Ordinance of the City of Wichita. The revised site plan and landscaping plan shall be submitted for approval by the Secretary and the building addition shall be constructed in conformance with the revised site plan approved by the Secretary.
5. The applicant shall confer with the City Engineer's Office on the necessity of retaining the northern driveway along Edgemoor and, in the event the driveway is to be closed, shall close the driveway in conformance with the requirements of the City of Wichita and shall bear all costs associated therewith.
6. The applicant shall obtain all local permits necessary to construct the building addition and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
7. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.
5. **Case No. BZA 4-99**, Charles F. McAfee, Abneer V.J. Jackson, Anderson E. Jackson, pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to allow 57 feet maximum height of building for the construction of new 100 room Howard Johnson Hotel on property zoned "LC" Limited Commercial legally described as follows:

Lot 1, J M Office Park Addition, Wichita, Sedgwick County,
Kansas. Generally located at 21st and Carmen (2911 E. 21st)

±

YEAROUT: Reviewed the comments from the Secretary's Report and presented slides of the area.

SECRETARY-S REPORT

CASE NUMBER: BZA 4-99

OWNER/APPLICANT: Charles F. McAfee, Abner V.J. Jackson and Anderson E. Jackson, 1011 E. 13th St., Wichita, KS, 67214 (Owners)

AGENT: James A. Crawford II, 1011 E. 13th St., Wichita, KS, 67214 (Agent)

REQUEST: Variance to modify the required compatibility height standard from 35 feet to 57 feet in order to permit construction of a hotel.

CURRENT ZONING: ALC@Limited Commercial

SITE SIZE: 1.23 Acres

LOCATION: South of 21st Street North and west of Carmen Drive

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance of the compatibility height standards to allow a total height of the proposed 100-unit hotel to 57 feet adjoining the lots to the south that are zoned ATF-3" Two-Family.

The developer is also seeking a Conditional Use permit to use two lots adjacent to the south that are zoned ATF-3" as ancillary parking for the hotel. The applicant is required to provide 121 parking spaces for the hotel project based on the Unified Zoning Code requirements of providing one parking space per guest room plus one parking space per 250 square feet of retail, service and office space and one parking space per 5 occupants allowed in a restaurant contained within the hotel. The amount of parking required can be reduced by administrative adjustment for commercial projects and would result in a minimum number of required parking spaces of 109 with the granting of an administrative adjustment. The attached site plan shows 110 parking spaces, with 57 of these spaces located on ATF-3" zoned property.

This request for a variance is related to three additional requests. As mentioned, an administrative adjustment is needed to reduce total parking spaces required, and the administrative adjustment also should include a request to allow 5 of the spaces to be located within the front yard setback. Secondly, the Conditional Use permit to allow use of the two lots zoned ATF-3" as ancillary parking is being processed. Finally, V-2156 requests vacation of the platted front yard setback from 25 feet to 12 feet to allow the canopy entrance of the hotel to extend into the required front yard setback along 21st

Street.

The area surrounding the site includes a mix of uses. The Northeast Police Substation is located directly east across Carmen Drive, followed by the Anguilla Northeast Branch Library and Bank IV (C.U.P. 210). The uses across 21st Street to the north include an office, a club and two single family houses. The two dwellings located between the ancillary lots to the south apparently have been converted from duplexes to single family dwellings. South and west of the parking lots are duplexes and single family houses.

CASE HISTORY: The hotel project site was platted as J. M. Office Park Addition in 1997 and was rezoned from AA@Two-Family Dwelling district and ARB@Four-Family Dwelling District to ALC@Light Commercial December 12, 1995 (MAPC Case Z-3182). The applicant proffered a voluntary restrictive covenant in association with the rezoning which included that signage be restricted to the requirements of ABB@Office District and that drinking establishments, adult entertainment establishments, liquor stores, and outside sales or rental of vehicles shall not be permitted. These restrictions remain in place.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" A Limited Commercial@, commercial uses
SOUTH: "TF-3" ATwo-Family", duplexes and single family units
EAST: "TF-3" ATwo-Family", Northeast Police Substation
WEST: "TF-3" ATwo-Family", duplexes and single family units

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the site would be permitted to develop to the height needed if the applicant owned all of the property between 21st Street and Shadybrook. However, the land in question was originally acquired by the City as part of the 21st Street expansion and the land was made available for redevelopment to private interests. If the whole block was in single ownership, the proposed height could be met without any problems.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as proposed improvements are a continuing effort to reinvest and revitalize the 21st Street corridor and the adjacent properties are benefiting from the increase in property values as a result.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Unified Zoning Code may constitute an unnecessary hardship upon the applicant inasmuch as the height restriction would limit the ability of the site to support the proposed hotel.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as no encroachments into any public

easements or any other public areas will result from the variance. And the greater public interest is being served by the construction of the hotel at this location.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the Unified Zoning Code inasmuch as the compatibility height variance will permit the construction of the hotel, which is a benefit to the neighborhood and community at large.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the compatibility height shall be modified to permit construction to a height of 57 feet.
2. The applicant shall obtain all local permits necessary to construct the hotel and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER: David, in the staff report in uniqueness. Would you explain the last sentence there. It says if the whole block was in single ownership the proposed heights could be met without any problem.

YEAROUT: Yes. If they owned all of the property and we adjusted and modified the zoning, we would not be needing to do a compatibility setback because we could of shifted the building further away were it met all the setback requirements. The compatibility setback, height setback applies were you have a certain amount of height that is allowed by right so far back. You can have additional height if you setback even further from the edge of the property. I mean it would have taken some other actions but it would not have necessarily been required to be a variance in order to complete the adjustments needed. We probably would have rezoned and replatted this into a single lot to resolve all of this. If they had owned all the way down to Shadybrook, if they had owned that whole big block and we were setting the hotel in here, we would not have the setback problems.

FOSTER: There are what, two or three houses in there now?

YEAROUT: Along the South side? Along Shadybrook?

FOSTER: Yes.

YEAROUT: I think probably between Carmen and Chautauqua there is three.

FOSTER: What would be the zoning allowed normally for this? Is how much for the **ALC@** in that area?

YEAROUT: The height? The standard height permitted in **ALC@** is eighty feet. It is the compatibility setback provisions that restricts the height and that is what we are asking to have varied. The standard height restriction in **ALC@** is eight feet in height.

FOSTER: Is the Cessna facility 80 feet high?

YEAROUT: Just down the street here? In the zoning category it could be, but it has residential zoning behind it that restricts it to a lesser height. It is the compatibility height standard that is the issue.

FOSTER: Have we had any other cases along there? I do not recall any. Any other history along there about height?

YEAROUT: None that I am aware of No.

PITTS: They have not done anything in quite some time to that area.

JAMES CRAWFORD, AGENT: This is a combination of years of quest for redevelopment in the 21st street area. This, as Mr. Yearout stated, has started with the Nationsbank on the corner of 21st and Hillside. Then as you move down you have the library and the Northeast Police substation. With Cessna further toward the Canal Route that is the beginnings of what is happening in this area. So to fully more meet the need and demand in that area as the CPO meeting found last night and so far will create jobs and provide more opportunities. This is why Howard Johnson requests a 100 room, 4 story hotel in this area. With the current compatibility as referenced before we would not be allowed to do so. In order to meet the demands for extra jobs, more potential for a neglected area we are making this request for the compatibility variance to allow for a four story hotel.

FOSTER: Let me ask about the CPO material that refers to an Arthur Bryant and Clarence Clark, do you have any idea where they live.

CRAWFORD: I am not familiar with Spyglass Circle. I can point over here. Away from microphone.

FOSTER: You think they would be to the west of the area?

CRAWFORD: Yes Sir, to the west.

FOSTER: As I understand and maybe it is just a related thing but your design shows that there would be no traffic exiting from a parking lot unto Shadybrook.

CRAWFORD: There will be no parking exit on Shadybrook.

FOSTER: I was just looking at there objections. I think other than potential for noise. I do not know that I agree with the other objections. Let me ask the staff a question about lighting. The lighting problem is the parking

wouldn't be in the back?

YEAROUT: Yes and the lighting standards within the zoning code will come into plan to do everything it can within the current standards of the city to minimize the impact of lighting on the neighborhood.

FOSTER: So the lighting really would not be a problem where they put the hotel itself then?

YEAROUT: No.

MALONE: Mr. Crawford, own lots eight and nine between the two parking lots by Shadybrook. How come you did not put those together? How come they are apart like that?

CRAWFORD: There is a question of acquisition cost for those. And with the scheduling it made it prohibited at this time to do so.

MALONE: The roof line. Is this a flat roof, a pitched roof?

CRAWFORD: Majority flat, as I understand with some peak at the edges for design sake.

FOSTER: We will contain the discussion to the board. I might make the comment that I think some height in the area would be very appropriate visually and give interest to the street.

PITTS: Mr. Chairman, I would ask Mr. Yearout to state again what you mentioned the reason why they could not have gone to eighty feet without even coming to us.

YEAROUT: It is because of the ATF-3" zoning adjacent to it. The residential zoning. The ALC@district provides a height restriction of eighty feet. But, there is a provision in the compatibility setback requirements that impose an additional height restriction above and beyond what is permitted by right that if you are adjacent to ATF-3" or ASF-6" zoning then there is more restrictive height restriction comes into play. It does not make any difference what the zoning says the more restrictive applies. And it is the compatibility height standard that we are asking for the variance.

DICKGRAFE: It is the type of issue that we addressed with the microwave tower for the school district. That based on the lot size they could be a certain height but do to the adjacent zoning there is compatibility standards. I think it is one foot for every three feet.

YEAROUT: Yes. You are allowed thirty five height for a 50 foot setback and after that for each additional height of structure you have to be three feet back from the property line.

FOSTER: How many stories do recall the new housing apartments. How tall are they? Is it four stories?

YEAROUT: Most of them are going three stories and they are standing under the 35 foot height. It is a challenge to them but they are doing it. If you will recall we had an appeal that possibility was going to be

heard last summer on the new apartments on 37th street that we had an appeal from Willowbend and Teal Cove neighborhoods. That was the issue that they were raising. How do you measure height? Because they were at 35 feet. That was later withdrawn and we did not get into that. Most of the apartments are staying a three stories. This particular hotel is proposed to be a four story structure and with some additional roof line amenities and other architectural features on it to give it some additional appearance the maximum height is going to 57 feet.

FOSTER: It is going to be four stories high and the apartments to the west to the west are three stories high?

YEAROUT: Yes I think that is correct.

DICKGRAFE: You are talking about the seniors.

FOSTER: Do you know is it three stories?

YEAROUT: Yes it is three stories. This will not be as tall as Cessna stadium.

FOSTER: So we are talking three stories to the west and four stories for the hotel.

MOTION: ROGERS moved PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report, and all five conditions set out in the section 2.12.590.B of the code as necessary for the granting of a variance have been found to exist, and the variance be granted subject to the conditions set out in the Secretary's Report. I note that there are three specific conditions.

Motion carries 4-0.

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the compatibility height shall be modified to permit construction to a height of 57 feet.
2. The applicant shall obtain all local permits necessary to construct the hotel and all improvements shall be completed within one year following BZA approval of the variance or resolution unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

PITTS: Do you think we can go over these summarize of activities at the next meeting?

YEAROUT: The annual report?

FOSTER: Does this have to be done to be turned in on time?

YEAROUT: It is dated today. We submit it to you.

FOSTER: This goes into the City Council?

YEAROUT: Yes. They want it as soon as possible. I think we submitted it the last time at the March meeting and we did here from them that it was later than most of the other boards.

FOSTER: The only question I have then, Floyd does it have anything in it about changing our situation or anything or like that.

YEAROUT: We did not get into any discussion with the Annual Report this year about the dialogue. Mainly because we did not doing anything on it. There was a couple of times during Board meetings were there was some discussion but there was not any further dialogue and the idea of combining and meeting with the County Board of Appeals and the Planning Commission to talk about the possible restructure that meeting never occurred. So the feeling was that there was no need to discuss that.

FOSTER: So that is not in here?

YEAROUT: No there is no dialogue about that.

ROGERS: Mr. Chairman, I would like to make a correction on Section 2 of the report. Membership attendance for some reason it has Mrs. Swann down as a male.

YEAROUT: That will be changed.

MOTION: ROGERS moved and PITTS seconded that the Board approve the 1998 Annual Report.

Motion carries 4-0.

YEAROUT: This is my last meeting I will no longer be with the city.

BOARD: Good Luck